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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 45

PUBLIC OFFICERS AND EMPLOYEES

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Cross references. — Filing false liens or encumbrances against public employees, § 16-10-20.1.

Law reviews. — For article, “Pensions and Chapter 9: Can Municipalities Use Bankruptcy to Solve Their Pension Woes?,” see 27 Emory Bankr. Dev. J. 365 (2011). For article, “Solving Insolvent Public Pensions: The Limitations of the

Current Bankruptcy Option,” see 28 Emory Bankr. Dev. J. 89 (2011).

For note, “Name-Clearing Hearings: How this ‘Remedy’ Fails to Safeguard the Procedural Due Process Rights of Public Employees Accused of Sexual Harassment,” see 26 Ga. St. U. L. Rev. 1389 (2010).

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
45-1-4.	Complaints or information from public employees as to fraud, waste, and abuse in state programs and operations.	45-1-6.	Gifts to employees by vendors; disclosure; reports.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Bad Faith in Abolition of Civil Service Position, 14 POF2d 611.

45-1-4. Complaints or information from public employees as to fraud, waste, and abuse in state programs and operations.

(a) As used in this Code section, the term:

(1) “Government agency” means any agency of federal, state, or local government charged with the enforcement of laws, rules, or regulations.

(2) “Law, rule, or regulation” includes any federal, state, or local statute or ordinance or any rule or regulation adopted according to any federal, state, or local statute or ordinance.

(3) “Public employee” means any person who is employed by the executive, judicial, or legislative branch of the state or by any other department, board, bureau, commission, authority, or other agency of the state. This term also includes all employees, officials, and administrators of any agency covered by the rules of the State Personnel Board and any local or regional governmental entity that receives any funds from the State of Georgia or any state agency.

(4) "Public employer" means the executive, judicial, or legislative branch of the state; any other department, board, bureau, commission, authority, or other agency of the state which employs or appoints a public employee or public employees; or any local or regional governmental entity that receives any funds from the State of Georgia or any state agency.

(5) "Retaliate" or "retaliation" refers to the discharge, suspension, or demotion by a public employer of a public employee or any other adverse employment action taken by a public employer against a public employee in the terms or conditions of employment for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or government agency.

(6) "Supervisor" means any individual:

(A) To whom a public employer has given authority to direct and control the work performance of the affected public employee;

(B) To whom a public employer has given authority to take corrective action regarding a violation of or noncompliance with a law, rule, or regulation of which the public employee complains; or

(C) Who has been designated by a public employer to receive complaints regarding a violation of or noncompliance with a law, rule, or regulation.

(b) A public employer may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the jurisdiction of such public employer.

(c) Notwithstanding any other law to the contrary, such public employer shall not after receipt of a complaint or information from a public employee disclose the identity of the public employee without the written consent of such public employee, unless the public employer determines such disclosure is necessary and unavoidable during the course of the investigation. In such event, the public employee shall be notified in writing at least seven days prior to such disclosure.

(d)(1) No public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency.

(2) No public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity.

(3) No public employer shall retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation.

(4) Paragraphs (1), (2), and (3) of this subsection shall not apply to policies or practices which implement, or to actions by public employers against public employees who violate, privilege or confidentiality obligations recognized by constitutional, statutory, or common law.

(e)(1) A public employee who has been the object of retaliation in violation of this Code section may institute a civil action in superior court for relief as set forth in paragraph (2) of this subsection within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier.

(2) In any action brought pursuant to this subsection, the court may order any or all of the following relief:

(A) An injunction restraining continued violation of this Code section;

(B) Reinstatement of the employee to the same position held before the retaliation or to an equivalent position;

(C) Reinstatement of full fringe benefits and seniority rights;

(D) Compensation for lost wages, benefits, and other remuneration; and

(E) Any other compensatory damages allowable at law.

(f) A court may award reasonable attorney's fees, court costs, and expenses to a prevailing public employee. (Code 1981, § 45-1-4, enacted by Ga. L. 1993, p. 563, § 1; Ga. L. 2005, p. 899, § 1/HB 665; Ga. L. 2007, p. 298, § 1/HB 16; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-66/HB 642.)

The 2005 amendment, effective July 1, 2005, added present paragraphs (a)(1) and (a)(2); redesignated former paragraphs (a)(1) and (a)(2) as paragraphs (a)(3) and (a)(4), respectively; in paragraph (a)(3), inserted “, judicial, or legislative” following “executive”, substituted “or” for “and” preceding “any other department”, and deleted “except the office of the Governor, the judicial branch, or the legislative branch” at the end; in paragraph (a)(4), inserted “, judicial, or legislative” following “executive” and deleted “except the office of the Governor, the judicial

branch, or the legislative branch” at the end; added paragraphs (a)(5), and (a)(6) and rewrote subsections (d) and (e).

The 2007 amendment, effective July, 1, 2007, added the last sentence in paragraph (a)(3); in paragraph (a)(4), substituted “state;” for “state or” near the beginning, and added “; or any local or regional governmental entity that receives any funds from the State of Georgia or any state agency” at the end; and in paragraph (a)(5), substituted “government agency” for “state agency” at the end.

The 2009 amendment, effective July

1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in the middle of the last sentence of paragraph (a)(3).

The 2012 amendment. effective July 1, 2012, substituted “by the rules of the State Personnel Board” for “under the State Personnel Administration” in the second sentence of paragraph (a)(3).

Editor’s notes. — Ga. L. 2009, p. 745, § 1, purported to amend this Code section, but the amendment was inapplicable.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Depart-

ment of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of labor and employment law, see 56 Mercer L. Rev. 291 (2004). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 309 (2007).

JUDICIAL DECISIONS

Discovery of retaliation. — As to a former employee’s claim under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, the employee “discovered the retaliation” on April 7, 2005, when he received a supervisor’s letter of termination or, at the very least, no later than August 10, 2005, when defendant university president affirmed the supervisor’s decision to terminate the employee. The claim was untimely under § 45-1-4(e)(1), as the employee filed suit November 14, 2006, some 15 months later. *Stokes v. Savannah State Univ.*, 291 Fed. Appx. 931 (11th Cir. 2008) (Unpublished).

Retroactivity of amendments to statute. — Three-year statute of limitations that was added to the Georgia Whistleblower Act (GWA) in 2005 in O.C.G.A. § 45-1-4(e)(1) is prospective in nature; thus, a port authority officer’s GWA claim, which related to the officer’s 2004 discharge, was not affected by the amendment. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

New remedies under O.C.G.A. § 45-1-4(e)(2) and (f), which were added by a 2005 amendment to the Georgia Whistleblower Act (GWA), § 45-1-4, do not apply retroactively; thus, a port authority officer who asserted claims under the GWA in connection with the officer’s

2004 discharge was limited to the remedies provided by the GWA as the GWA existed in 2004. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Elements of claim. — It is not enough that a state employer had a policy of stamping out internal dissent; a plaintiff under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, must allege that the plaintiff dissented and was thereby stamped. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1272 (S.D. Ga. 2007).

Burden of proof. — McDonnell Douglas burden-shifting analysis used in Title VII retaliation cases is appropriately utilized in the context of evaluating whether a state whistle-blower claim is subject to summary adjudication, and this analytical framework is in no way inconsistent with the holding that circumstantial evidence may preclude summary judgment in these cases because the McDonnell Douglas burden-shifting analysis rightly places on the plaintiff the ultimate burden of proving that he or she was the victim of discrimination; therefore, the following analytical framework is applied to claims brought pursuant to O.C.G.A. § 45-1-4(d)(2): (1) the plaintiff must establish a prima facie case of retaliation by a preponderance of the evidence, (2) if a prima facie case is established by the

plaintiff, the employer must, nevertheless, articulate a legitimate, non-retaliatory reason for the adverse employment action taken, and (3) when such a reason is given by the employer, the plaintiff must demonstrate that the stated reason for the employer's adverse action is pretextual. *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 708 S.E.2d 660 (2011).

Monetary damages remedy. — Georgia Whistle Blower Statute (Act), O.C.G.A. § 45-1-4, does not provide a remedy of monetary damages for public employees as: (1) the legislature did not specifically include a monetary damages remedy, such as the remedy provided by the Georgia Fair Employment Practices Act, specifically O.C.G.A. § 45-19-38(c); (2) the limitations of statutes waiving sovereign immunity have to be strictly followed; and (3) to “set aside” an action, the language used in the Act, consistent with the accepted definition of “set aside,” requires the action to be vacated, cancelled, and annulled. *Hughes v. Ga. Dep't of Corr.*, 267 Ga. App. 440, 600 S.E.2d 383 (2004).

Because a former agency employee's claims under O.C.G.A. § 45-1-4 were limited to claims for reinstatement, and did not include monetary damages, the claims were consistent with the relief authorized by the statute; the employee's former superiors failed to show that the requirements of the Tort Claims Act had been incorporated into the Whistleblower law. *Moore v. Gabriel*, No. 3:05-cv-31 (CAR), 2005 U.S. Dist. LEXIS 36202 (M.D. Ga. Dec. 15, 2005).

Persons to whom O.C.G.A. § 45-1-4 applies.

Former port police officer's Georgia Whistleblower Act claim was governed by the version of O.C.G.A. § 45-1-4 that was in effect prior to July 1, 2005 because the officer was discharged in 2004; the officer's claim failed because the information that the officer was allegedly discharged for conveying was related to a member of Georgia's Homeland Security Task Force, rather than the officer's employer, the Georgia Ports Authority. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1272 (S.D. Ga. 2007).

In the employees' action alleging that the employees were terminated from a county department of children and family services (DFCS) for reporting the unlawful conduct of a coworker in violation of the whistle-blower statute, O.C.G.A. § 45-1-4(d)(2), the employees failed to establish that the employees engaged in whistle-blowing because, to the extent that the employees claimed to have disclosed something that was already widely known (and even joked about), that was not the type of communication encompassed by the whistle-blower statute; the employees all testified in the employees' depositions that the coworker's illnesses and excuses were a “running joke” with DFCS directors, that everybody (employees and directors included) knew about the coworker's abuse of prescription drugs, and that the coworker's chronic absenteeism and drug use were discussed at the office on a daily basis. *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 708 S.E.2d 660 (2011).

Employees personal concern about coworker not included in statute. — In the employees' action alleging that the employees were terminated from a county department of children and family services (DFCS) for reporting the unlawful conduct of a coworker in violation of the whistle-blower statute, O.C.G.A. § 45-1-4(d)(2), the employees failed to establish that the employees engaged in whistle-blowing because, to the extent the employees were merely expressing the employees' personal concern about a troubled friend, that type of communication was not encompassed by the whistle-blower statute; there was deposition testimony by various DFCS directors and interim directors that the concerns expressed by the employees were personal concerns about the coworker regarding the coworker's excessive absences from the office and use of prescription medication. *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 708 S.E.2d 660 (2011).

Declaratory relief. — Port authority officer who alleged that the officer was discharged after the officer complained that the port authority had serious security problems was not entitled to a declar-

atory judgment stating that the port authority's rule prohibiting employees from divulging the phone numbers of coworkers violated O.C.G.A. § 45-1-4 because the port authority's rule put a restriction on the disclosure of phone numbers, not the disclosure of rule violations. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Dismissal as moot improper. — Trial court erred in dismissing a public employee's Georgia Whistle Blower Statute, O.C.G.A. § 45-1-4, suit as moot as: (1) the employer, the Georgia Department of Corrections, continued to employ grandfathered pharmacists according to an affidavit submitted under O.C.G.A. § 9-11-43; (2) the employee had been a grandfathered pharmacist while employed by the Department; and (3) the appellate court saw no reason, but for the alleged retaliatory action, that the employee would not remain employed as a pharmacist with the Department; the employee's retirement from the Department made the matter moot only if the employee did not want to return to work or could not because the employee was past the mandatory retirement age, but these facts were not apparent from the stipulation that the employee had retired. *Hughes v. Ga. Dep't of Corr.*, 267 Ga. App. 440, 600 S.E.2d 383 (2004).

Activity must concern law, rule, or regulation. — Where a port authority officer alleged that the officer was discharged after the officer complained that the port authority was violating its own rules and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1, the officer stated a cognizable claim under O.C.G.A. § 45-1-4(a)(2), (d)(2). *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Allegations of safety concerns failed to allege violation of law, rule, or regulation. — A university professor failed to state a claim under the Whistleblower Act because his allegations that he voiced concerns over lab safety at the university did not show that he disclosed any violation of a "law, rule, or regulation" as required under O.C.G.A. § 45-1-4(a)(2). *Edmonds v. Bd. of Regents*, 302 Ga. App. 1, 689 S.E.2d 352 (2009),

cert. denied, No. S10C0824, 2010 Ga. LEXIS 437 (Ga. 2010).

Jury determines if reprisal action was taken. — Board of Regents was not entitled to summary judgment on the employee's claim under O.C.G.A. § 45-1-4, the "whistleblower" statute, because a jury issue existed regarding whether "action" was taken against the employee for purposes of § 45-1-4; the record contained at least some circumstantial evidence that the employee was dismissed in reprisal for the employee's investigation into the university's officers and for disclosing information of fraud in connection with the investigation. *Jones v. Bd. of Regents of the Univ. Sys. of Ga.*, 262 Ga. App. 75, 585 S.E.2d 138 (2003).

Waiver of sovereign immunity. — Right of action provided in the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, is a waiver of the State of Georgia's sovereign immunity independent of the waiver in the Georgia Tort Claims Act. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Failure to make out prima facie case of retaliation. — Trial court did not err in granting summary judgment in favor of the Georgia Department of Human Services in the employees' action alleging that the employees were terminated from a county department of children and family services for reporting the unlawful conduct of a coworker in violation of the whistle-blower statute, O.C.G.A. § 45-1-4(d)(2), because, although there was a genuine issue of material fact as to whether the employees made protected disclosures to a supervisor, the employees could not show a causal connection between a protected disclosure and the adverse employment action taken against the employees; the employees presented no evidence that the actual decision-maker knew about the employees' disclosures to the supervisor about the coworker or that the supervisor personally had any role in the employees' termination other than to deliver the message of the employees' dismissals, and mere guesses and speculation were all that the employees presented in support of a causal connection between those disclosures and the employees' subsequent

terminations. *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 708 S.E.2d 660 (2011).

Reason for termination relevant. — Decision granting summary judgment to the Board of Regents of the University System of Georgia on a former administrative assistant's (AA) Georgia Whistleblower Act claim was proper as the former AA failed to establish that a genuine issue of material fact existed as to

the reason for the former AA's termination; the board submitted direct evidence that the former AA's termination was based on insubordinate behavior during an exchange with a college president, but the former AA failed to present any evidence contradicting the occurrence of the dispute between the former AA and the president. *Caldon v. Bd. of Regents of the Do-016 Univ. Sys. of Ga.*, 311 Ga. App. 155, 715 S.E.2d 487 (2011).

RESEARCH REFERENCES

ALR. — What constitutes activity of employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Sufficiency of report, 10 ALR6th 531.

What constitutes activity of employee, other than "reporting" wrongdoing, protected under state whistleblower protection statute, 13 ALR6th 499.

What constitutes activity of private-sector employee protected under state whistleblower protection statute covering employee's "report," "disclosure,"

"notification," or the like of wrongdoing — nature of activity reported, 36 ALR6th 203.

What constitutes activity of public or state employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — nature of activity reported, 37 ALR6th 137.

Construction and application of whistleblower provision of Sarbanes-Oxley Act, 18 U.S.C.S. § 1514A(a)(1), 15 ALR Fed. 2d 315.

45-1-6. Gifts to employees by vendors; disclosure; reports.

(a) As used in this chapter, the term:

(1) "Commission" means the Georgia Government Transparency and Campaign Finance Commission created under Code Section 21-5-4.

(2) "Gift" means a gratuity, subscription, membership, trip, meal, loan, extension of credit, forgiveness of debt, advance or deposit of money, or anything of value.

(3) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(4) "Public employee" means every person employed by the executive, legislative, or judicial branch of state government or any department, board, bureau, agency, commission, or authority thereof. This shall not include elected officials.

(5) "Vendor" means any person who sells to or contracts with any branch of state government or any department, board, bureau, agency, or commission thereof for the provision of any goods or services.

(b) Any vendor who, either directly or through another person, makes a gift or gifts to one or more public employees exceeding in the aggregate \$250.00 in value during any calendar year shall file a disclosure report with the commission in the form specified by the commission listing the amount and date of receipt, the name and mailing address of any vendor making the gift, and the name, address, and position of each public employee receiving such a gift.

(c) Each disclosure report required by subsection (b) of this Code section shall be filed with the commission not later than February 1 of each year and shall cover the preceding calendar year.

(d) A report required by this Code section shall be verified by the oath or affirmation of the person filing such report or statement taken before an officer authorized to administer oaths. Each report required in a calendar year shall contain cumulative totals of all gifts which have been made or received and which are required to be reported.

(e) In addition to other penalties provided under this Code section, a filing fee of \$50.00 shall be imposed for each report that is filed late. In addition, a filing fee of \$25.00 shall be imposed on the fifteenth day after the due date if the report has still not been filed.

(f) The commission is vested with the same powers with respect to this Code section as enumerated in Code Section 21-5-6.

(g) Venue for prosecution of civil violations of this Code section or for any other action by or on behalf of the commission shall be in the county of residence of the accused person at the time of the alleged violation or action.

(h) Any person who knowingly fails to comply with or knowingly violates this Code section shall be guilty of a misdemeanor. (Code 1981, § 45-1-6, enacted by Ga. L. 1996, p. 1069, § 1; Ga. L. 2010, p. 1173, § 26/SB 17.)

The 2010 amendment, effective January 10, 2011, substituted “Georgia Government Transparency and Campaign Finance Commission” for “State Ethics Commission” in paragraph (a)(1). See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews. — For article, “Georgia’s New Ethics Laws: A Summary of the Changes Relevant to Lobbyists and Legislators,” see 11 Ga. St. B.J. 22 (No. 4, 2005).

CHAPTER 2

ELIGIBILITY AND QUALIFICATIONS FOR OFFICE

Article 1

Sec.

General Provisions

Sec.

45-2-7. Employment of aliens — Prohibited generally; exceptions.

Article 3

Physical Examination of State Employees

45-2-44.

45-2-41. Committee of doctors to de-

velop fitness standards; licensed physician to make physical examination; contracts for assessments of employees; fee for committee members and consultants; certification.

State Personnel Board to adopt rules and regulations; expenditure of funds.

ARTICLE 1

GENERAL PROVISIONS

45-2-1. Persons ineligible to hold civil office; vacation of office; validity of acts performed while in office.

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

FELONY INVOLVING MORAL TURPITUDE

1. IN GENERAL

PERSONS HOLDING OTHER OFFICES

ELIGIBILITY FOR COUNTY OFFICES

1. RESIDENCY REQUIREMENT

General Consideration

Construction in favor of eligibility.

County attorney is not a county elected official, but rather is a county employee, so the residency requirement of O.C.G.A. § 45-2-1(1) does not apply to him under Ga. Const. 1983, Art. IX, Sec. I, Para. III and O.C.G.A. § 45-2-5; a county attorney is entitled to sovereign immunity as a county employee. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

De facto officer.

Arrest warrant was not subsequently invalid because it was signed by a magistrate who was later removed from office

for misconduct, and thus, any subsequent proceedings thereafter were also not invalid, as: (1) the magistrate's acts while in office were considered valid as the acts of an officer de facto; and (2) due to such, the magistrate's acts could not be collaterally attacked and set aside. *Keith v. State*, 279 Ga. App. 819, 632 S.E.2d 669 (2006).

Cited in *Beck v. State*, 286 Ga. App. 553, 650 S.E.2d 728 (2007); *Spillers v. State*, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

Felony Involving Moral Turpitude

1. In General

Disqualification from public office.

— Where defendant pled nolo contendere

in Florida to a felony, which was a felony under Georgia law, defendant would have been disqualified from holding public office pursuant to O.C.G.A. § 45-2-1(3), but defendant was exempted from such disqualification by O.C.G.A. § 17-7-95(c), under which the nolo plea could not be deemed a guilty plea for the purposes of effecting the disqualification. *Hardin v. Brookins*, 275 Ga. 477, 569 S.E.2d 511 (2002).

Persons Holding Other Offices

Federal offices.

The tax assessor's service on a county agricultural committee (as part of a federal agency) did not bar appointment to the tax board because federal offices were excluded, the position was temporary, and would not interfere with the tax assessor's duties on the tax board. *Wheeler County Bd. of Tax Assessors v. Gilder*, 256 Ga. App. 478, 568 S.E.2d 786 (2002).

Eligibility for County Offices

1. Residency Requirement

Lack of standing. — Former county commissioner lacked U.S. Const. Art. III standing to pursue a suit alleging that the redistricting done under 2002 Ga. Laws 401 violated the commissioner's equal protection rights because, even if 2002 Ga. Laws 401 was found unconstitutional, a new redistricting plan might still cause the commissioner to lose the commissioner's incumbent status, thereby preventing the commissioner from running for the office of commissioner in the district that commissioner served for eight years because the commissioner was no longer a resident of that district, as required by O.C.G.A. § 45-2-1; thus, the commissioner's injury could not be redressed by a favorable decision. *Scott v. Taylor*, 470 F.3d 1014 (11th Cir. 2006).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 20B Am. Jur. Pleading and Practice Forms, Public Officers and Employees, § 3.

45-2-4. Officers to reside in state, discharge duties until successor commissioned, and have seal.

OPINIONS OF THE ATTORNEY GENERAL

Senate's declining to consider appointments. — Adjournment of the Senate sine die without confirmation of gubernatorial appointments created vacancies in those offices and the Governor is free to

fill those vacancies through the Governor's own ad interim appointments until the Senate should next meet. 2003 Op. Att'y Gen. No. 2003-5.

45-2-5. Municipal or county governments not to require residence as condition of employment.

JUDICIAL DECISIONS

Residency not required. — County attorney is not a county elected official, but rather is a county employee, so the residency requirement of O.C.G.A. § 45-2-1(1) does not apply to him under Ga. Const. 1983, Art. IX, Sec. I, Para. III

and O.C.G.A. § 45-2-5; a county attorney is entitled to sovereign immunity as a county employee. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

45-2-7. Employment of aliens — Prohibited generally; exceptions.

(a) Except as provided in subsections (b) through (d) of this Code section, no department of the state government or any political subdivision thereof shall employ any alien for any purpose until a thorough investigation has been made and it is ascertained that there is no qualified American citizen available to perform the duty desired.

(b) An institution of the University System of Georgia may employ an alien who is attending such institution as a student. Such an institution may employ any other alien for a period of time not to exceed one year or may enter into exchange professorship agreements with institutions, foreign or otherwise, where aliens are involved for a period of time not to exceed one year.

(c) The prohibition of subsection (a) of this Code section shall not apply to the employment of an alien who is not a Communist and who is in this country as a student enrolled in a college or university in this state or in a program of student exchange sponsored or participated in by a college or university in this state, as certified by the dean or registrar thereof.

(d) The prohibitions of subsection (a) of this Code section shall not apply to the employment of aliens licensed under Code Section 43-34-27, relating to the licensing of aliens to practice medicine or pharmacy. (Ga. L. 1937-38, Ex. Sess., p. 189, § 1; Ga. L. 1955, p. 382, § 1; Ga. L. 1968, p. 1244, § 1; Ga. L. 2009, p. 859, § 15/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Code Section 43-34-27” for “Code Section 43-34-33” in the middle of subsection (d).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 45-2-7 is not drafted with sufficient precision to withstand strict scrutiny; the law is fatally overinclusive because it does not ensure a “substantial fit” between the law and those public positions that “go to the heart” of representative government. *Chang v. Glynn County Sch. Dist.*, 457 F. Supp. 2d 1378 (S.D. Ga. 2006).

O.C.G.A. § 45-2-7 was unconstitutional

under the strict scrutiny test of the equal protection clause as it did not ensure a “substantial fit” between the law and public positions that went to the heart of representative government, and the school district was enjoined from implementing the statute against the two resident alien teachers. *Chang v. Glynn County Sch. Dist.*, 457 F. Supp. 2d 1378 (S.D. Ga. 2006).

ARTICLE 3

PHYSICAL EXAMINATION OF STATE EMPLOYEES

45-2-41. Committee of doctors to develop fitness standards; licensed physician to make physical examination; contracts for assessments of employees; fee for committee members and consultants; certification.

(a) The commissioner of administrative services, subject to the approval of the State Personnel Board, shall appoint up to five doctors of medicine licensed by the state and other specialists, as appropriate, to develop standards of medical and physical fitness required for persons about to be appointed to positions in the state service. Such standards shall be related to the duties required of specific positions in the state service. The commissioner of administrative services shall develop the forms to secure the information needed to determine if prospective employees meet the medical and physical fitness standards required to perform the essential functions of the relevant position.

(b) If a physical examination is required by the standards of medical and physical fitness, a licensed medical practitioner may perform the assessment and report the findings to a physician in the employ of or under contract with the state or respective employing department. The licensed medical practitioner may be of the applicant's choice and at the applicant's expense or may be a licensed physician in the employ of or under contract with the state or respective employing department. When the licensed physician is in the employ of or under contract with the state or respective employing department, the assessment and findings shall be made to the respective department and shall be final, except as provided in the State Personnel Board rules.

(c) The commissioner of administrative services may, through a competitive proposal process, enter into an agreement on behalf of the departments to contract with medical practitioners for the purpose of conducting assessments for medical and physical fitness as required by the standards of medical and physical fitness. In such case, each department may use the selected contractor as an expense of a departmental employee selection process or may recommend that prospective employees seek the examination at the contractor's site at the prospective employee's expense. If the prospective employee chooses to use a medical practitioner other than one selected by the department or under contract with the state on behalf of the department, the findings and recommendations of such other practitioner shall be furnished to the medical practitioner selected by the department or under contract with the state on behalf of the department for final determination of the medical and physical fitness of the prospective

employee. Expenses for the medical practitioner under contract with the state on behalf of the department shall be paid by the respective employing department based upon the services provided by such medical practitioner.

(d) The State Personnel Board is authorized to establish a fee and make payment of same to the consultants appointed by the commissioner of administrative services for services rendered in the development of standards of medical and physical fitness for state employees; provided, however, that no state employee shall receive additional compensation for services as a consultant for developing the standards of medical and physical fitness.

(e) The certification required by Code Section 45-2-40 shall be completed as required in the rules of the State Personnel Board; provided, however, that if a physical examination is required by the standards for medical and physical fitness, the physical examination shall be completed prior to the date of appointment, and the reporting of results shall occur within a prescribed number of calendar days from the date of appointment. (Ga. L. 1956, p. 808, § 2; Ga. L. 1960, p. 189, § 2; Ga. L. 1962, p. 541, §§ 1-3; Ga. L. 1975, p. 76, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1996, p. 1094, § 2; Ga. L. 2012, p. 446, § 2-67/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “commissioner of administrative services” for “commissioner of personnel administration” throughout this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-2-44. State Personnel Board to adopt rules and regulations; expenditure of funds.

The State Personnel Board, subject to the approval of the Governor, shall adopt and promulgate rules and regulations for the administration of this article. The board, through the commissioner of administrative services, is authorized to expend allocated funds for the necessary forms and other incidental administrative expenses in effectuating this article. All other expenses shall be borne by the prospective employee or the respective employing department in accordance with the rules of the board. (Ga. L. 1956, p. 808, § 5; Ga. L. 1960, p. 189, § 3; Ga. L. 1996, p. 1094, § 3; Ga. L. 2012, p. 446, § 2-68/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “commissioner of administrative services” for “commissioner of personnel administration” in the second sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

CHAPTER 4

OFFICIAL BONDS

45-4-7. County officials required to have corporate surety on bond; county to pay premiums.

JUDICIAL DECISIONS

Cited in *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003).

45-4-30. Applicability of chapter.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 20C Am. Jur. Pleading and Practice Forms, Public Officers and Employees, § 72.

CHAPTER 5

VACATION OF OFFICE

45-5-1. When offices deemed vacated; filling vacancy; notice; appeal.

JUDICIAL DECISIONS

Cited in *Perdue v. Palmour*, 278 Ga. 217, 600 S.E.2d 370 (2004).

CHAPTER 6

POWERS AND DUTIES GENERALLY

Sec.		Sec.	
45-6-3.	Official reports to conform with fiscal year.	45-6-6.	Office property kept by public officers subject to inspection.
45-6-4.	Mailing of annual reports to General Assembly members.		

45-6-3. Official reports to conform with fiscal year.

The year for official reports shall be coincident with the fiscal year, and it shall be the duty of the public officers of this state to make and publish in print or electronically annually their official reports for the period commencing on July 1 and ending on June 30 of each year, inclusive. All public officers shall conform to the fiscal year as established in Code Section 45-6-2 in reporting and recording the financial operations of their respective offices and departments. (Ga. L. 1880-81, p. 29, § 2; Code 1882, § 79a; Civil Code 1895, § 233; Ga. L. 1903, p. 25, § 1; Civil Code 1910, § 268; Code 1933, § 89-902; Ga. L. 1937, p. 456, §§ 2, 4; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence.

45-6-4. Mailing of annual reports to General Assembly members.

(a) Each state agency, authority, office, board, department, or official directed by law to file or electing to file an annual report shall notify each member of the General Assembly in the manner which the reporting entity deems to be most effective and efficient that such report is available upon request on or before June 1 of each year, unless another date is provided for by law.

(b) Each state agency, authority, office, board, department, or official directed by law to provide or electing to provide the members of the General Assembly with any annual report, budget, or audit other than those referred to in subsection (a) of this Code section shall not be required to distribute copies of such materials to the members but shall notify the members of the availability of such materials in the manner which the reporting entity deems to be most effective and efficient.

(c) Each state agency, authority, office, board, department, or official shall be required to furnish to any member of the General Assembly any such annual report, budget, or audit referred to in this Code section upon request of any member of the General Assembly. (Ga. L. 1917, p.

998; Code 1933, § 40-1701; Ga. L. 1991, p. 1125, § 1; Ga. L. 2005, p. 1036, § 29/SB 49.)

The 2005 amendment, effective July 1, 2005, redesignated the former provisions of this Code section as present subsection (a); in subsection (a), inserted “agency, authority, office, board, department, or”, inserted “or electing to file”, substituted “notify each member of the General Assembly in the manner which the reporting entity deems to be most

effective and efficient” for “send by inter office mail a notification”, deleted “to each member of the General Assembly at his legislative office at the state capitol,” following “available upon request”, and added “, unless another date is provided for by law” at the end; and added subsections (b) and (c).

45-6-5. Source of powers of public officers generally; public not estopped by acts of officer exercising unconferrred power.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For annual survey on

local government law, see 61 Mercer L. Rev. 255 (2009).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
POWERS OF PUBLIC OFFICERS
ESTOPPEL

General Consideration

Settlement agreement enforceable. — Trial court erred in denying a property owner’s motion for summary judgment in a county breach of contract action because a settlement agreement between the parties was enforceable; the county attorney had authority to make the settlement offer on behalf of the county board, and while a vote in a public meeting was a required formality to effectuate the purchase, the board’s failure to complete that formality when voting in the public meeting could not destroy an already existing settlement agreement. *Old Peachtree Partners, LLC v. Gwinnett County*, No. A11A2097; No. A11A2150, 2012 Ga. App. LEXIS 259 (Mar. 8, 2012).

Cited in *Kaplan v. City of Sandy Springs*, 286 Ga. 559, 690 S.E.2d 395 (2010).

Powers of Public Officers

Misrepresentations not generally basis for fraud action.

County administrator incorrectly ad-

vised a former county employee that the employee would start receiving retirement benefits in nine years. As the administrator disregarded and deviated from the terms of the county retirement plan, rather than simply making a mistake during an otherwise authorized action under the plan, the administrator engaged in an ultra vires action that could not support the employee’s promissory estoppel claim under O.C.G.A. § 13-3-44(a). *Mullis v. Bibb County*, 294 Ga. App. 721, 669 S.E.2d 716 (2008).

Actions by county attorney can bind county. — Although a county attorney did not have plenary authority over a matter involving a property owner’s erection of a sign that exceeded the zoning height limitations and should have sought the approval of the County Board of Commissioners prior to entering into a consent order with respect to the dispute, the county was bound by the order where the attorney asserted that the attorney had the power and authority to enter the order

and it was in the interests of public policy. Although O.C.G.A. § 45-6-5 does not confer plenary settlement authority over a public sector attorney, the attorney's actions in the circumstances justified the imposition of the attorney's actions on the county. *DeKalb County v. DRS Invs., Inc.*, 260 Ga. App. 225, 581 S.E.2d 573 (2003).

Estoppel

The state cannot be estopped by the unauthorized actions, etc.

Because a mayor lacked authority to unilaterally bind the town to a contract with the contractor, any contract based on an authorization from the mayor was unauthorized; this foreclosed the contractor from asserting estoppel against the town. *Griffin Bros., Inc. v. Town of Alto*, 280 Ga. App. 176, 633 S.E.2d 589 (2006).

City's annexation of county roads was not ultra vires, allowing defense of estoppel. — City's failure to finalize the city's annexation of county roads by adopting an ordinance, preparing a survey, and filing the annexation with the

Georgia Secretary of State were errors of omission, not ultra vires actions contrary to former O.C.G.A. §§ 36-36-1 and 36-36-2 (see O.C.G.A. §§ 36-36-20 and 36-36-21) which the city had no power to take. Therefore, O.C.G.A. § 45-6-5 did not preclude the city from contending that the county was estopped from challenging the annexation by the county's failure to object to the annexation for 20 years. *City of Holly Springs v. Cherokee County*, 299 Ga. App. 451, 682 S.E.2d 644 (2009).

Officer not entitled to rely on estoppel. — Board's action in rescinding a retired officer's prior credited service was not a recalculation, but an annulment of an entitlement that had no legal basis and was thus proper. The retired officer's entitlement to the prior service credit never vested, so the board lacked any power which was expressly conferred by law to award the pension based on that prior service, and the retired officer was not entitled to relief under the doctrine of estoppel. *Dukes v. Board of Trs. for the Police Officers Pension Fund*, 280 Ga. 550, 629 S.E.2d 240 (2006).

45-6-6. Office property kept by public officers subject to inspection.

All books, papers, and other office property kept by any public officer under the laws of this state may be copied or inspected subject to the requirements of Article 4 of Chapter 18 of Title 50. (Laws 1831, Cobb's 1851 Digest, p. 196; Code 1863, § 16; Code 1868, § 14; Code 1873, § 14; Code 1882, § 14; Civil Code 1895, § 14; Civil Code 1910, § 14; Code 1933, § 89-601; Ga. L. 2012, p. 218, § 13/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted "may be copied or inspected subject to the requirements of Article 4 of Chapter 18 of Title 50" for

"shall be subject to the inspection of all the citizens of this state within office hours every day except Sundays and holidays" in this Code section.

CHAPTER 7

SALARIES AND FEES

Article 1		Sec.	
General Provisions			
Sec.			
45-7-4.	Annual salaries of certain state officials; cost-of-living adjustments.		ment; rules and regulations to be issued by the Department of Audits and Accounts and the Office of Planning and Budget [Repealed].
45-7-7.	Compensation and allowances of certain officials not to be changed without giving public notice.	45-7-32.	Unlawful use of travel advance received from public funds for nongovernmental purposes; fraudulent request for reimbursement of expenses; penalty for violations.

Article 2		Article 3	
Reimbursement of Expenses		Salary Deductions	
45-7-21.	Expense allowance and travel cost reimbursement for members of certain boards and commissions.	45-7-54.	Voluntary contributions by state government employees through payroll deductions to certain not for profit organizations.
45-7-22.	Reimbursement for relocation expenses — Authorization generally.	45-7-57.	Deduction from wages for contributions into savings trust accounts.
45-7-28.1.	Employee travel reimburse-		

ARTICLE 1

GENERAL PROVISIONS

45-7-4. Annual salaries of certain state officials; cost-of-living adjustments.

(a) The annual salary of each of the state officials listed below shall be as follows:

(1) Governor \$ 60,000.00

An allowance in an amount specified in the appropriations Act shall also be provided for the operation of the Governor's mansion.

(2) Lieutenant Governor 54,920.00

(3) Adjutant general

The adjutant general shall continue to receive the pay and allowances under the same procedure as provided by law.

(4) Commissioner of Agriculture 100,429.00

(5) Attorney General	114,633.00
(6) Reserved.	
(7) Commissioner of Insurance	100,396.00
(8) Reserved.	
(9) Commissioner of Labor	100,418.00

The above amount of salary for the Commissioner of Labor shall include any compensation received from the United States government and the amount of state funds paid shall be reduced by the amount of compensation received from the United States government.

(10) Reserved.	
(11) Each member of the Public Service Commission	96,655.00
(12) Reserved.	
(13) State School Superintendent	102,708.00
(14) Secretary of State	102,708.00
(15) Reserved.	
(16) Reserved.	
(17) Reserved.	
(18) Each Justice of the Supreme Court	139,418.00
(19) Each Judge of the Court of Appeals	138,556.00
(20) Each superior court judge	99,862.00

Each superior court judge shall also receive any supplement paid to such judge by the county or counties of such judge's judicial circuit as may be provided for by law. Each superior court judge shall also receive reimbursement of travel expenses as provided by law.

(21) Each district attorney	107,905.00
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Each district attorney shall also receive any supplement paid to such district attorney by the county or counties of such district attorney's judicial circuit as may be provided for by law. Each district attorney shall also receive reim-

bursement of travel expenses as provided by law.

(22) Each member of the General Assembly 16,200.00

(A) Reserved.

(B) Each member of the General Assembly shall also receive the allowances provided by law. The amount of the daily expense allowance which each member is entitled to receive under the provisions of Code Section 28-1-8 shall be as provided in that Code section. The mileage allowance for the use of a personal car on official business shall be the same as that received by other state officials and employees.

(C) In addition to any other compensation and allowances authorized for members of the General Assembly, each member may be reimbursed for per diem differential and for actual expenses incurred in the performance of duties within the state as a member of the General Assembly in an amount not to exceed \$7,000.00 per year. Expenses reimbursable up to such amount shall be limited to one or more of the following purposes: lodging, meals, per diem differential, postage, personal services, printing and publications, rents, supplies (including software), telecommunications, transportation, utilities, and purchasing or leasing of equipment. If equipment purchased by a member has a depreciated value of \$100.00 or less when such member leaves office, the equipment does not need to be returned to the state. No reimbursement shall be made for any postage which is used for a political newsletter. No reimbursement shall be paid for lodging or meals for any day for which a member receives the daily expense allowance as provided in this paragraph. Such expenses shall be reimbursed upon the submission of sworn vouchers to the legislative fiscal office. Such sworn vouchers shall be accompanied by a supporting document or documents showing payment for each expense claimed or an explanation of the absence of such documentation. No sworn voucher or sup-

porting document shall be required for per diem differential.

(D) The amount of per diem differential which may be claimed for each day under subparagraph (C) of this paragraph shall be the difference between the daily expense allowance authorized for members of the General Assembly and \$119.00; provided, however, that the General Appropriations Act for any fiscal year may increase such amount of \$119.00 per day to an amount not in excess of the federal per diem rate then in effect for the state capital as specified by the General Services Administration. Per diem differential shall be paid by the legislative fiscal office to the member upon the member's notification to the legislative fiscal office of the days for which the daily expense allowance was received for which the member wishes to claim the per diem differential, and the legislative fiscal office shall keep a record of the days for which per diem differential is so claimed and paid.

(E) For the purposes of this paragraph, a year shall begin on the convening date of the General Assembly in regular session each year and end on the day prior to the convening of the General Assembly in the next calendar year. Any voucher or claim for any reimbursement for any year as defined in this paragraph shall be submitted no later than the fifteenth of April immediately following the end of such year. No reimbursement shall be made on any voucher or claim submitted after that date. Any amounts remaining in such expense account at the end of the first year of the two year biennium may be claimed for expenses incurred during the second year of the two year biennium. Any amounts remaining in any expense account which are not so claimed by April 15 of the year following the second year of the biennium and any amounts claimed which are returned as hereafter provided for in this paragraph shall lapse and shall be remitted by the legislative fiscal office to the general fund of the state treasury. Any former member of the Gen-

eral Assembly may be reimbursed for expenses incurred while a member of the General Assembly upon compliance with the provisions of this paragraph. The Legislative Services Committee is empowered to provide such procedures as it deems advisable to administer the provisions of this paragraph, including, but not limited to, definitions of the above list of items for which reimbursement may be made and the form of the voucher or claim which must be submitted to the legislative fiscal office. In the event of any disagreement as to whether any reimbursement shall be made or any allowance shall be paid, the Legislative Services Committee shall make the final determination. In the event any reimbursement is made or any allowance is paid and it is later determined that such reimbursement or payment was made in error, the person to whom such reimbursement or payment was made shall remit to the legislative fiscal office the amount of money involved. In the event any such person refuses to make such remittance, the legislative fiscal office is authorized to withhold the payment of any other moneys to which such person is entitled until the amount of such reimbursement or payment which was made in error shall be realized.

- (23) Speaker of the House of Representatives 17,800.00

The Speaker of the House of Representatives shall also receive the salary and allowances authorized as a member of the General Assembly. Upon the taking of office by the members of the General Assembly on the convening day of the regular session of the General Assembly in 1983, the annual salary of the Speaker of the House of Representatives shall become \$22,800.00. After such date, the Speaker shall also receive as additional salary a sum equal to the amount of salary over \$30,000.00 per annum which is received by the Lieutenant Governor as of that date or thereafter; and the salary of the Speaker shall be adjusted at the beginning of each term so as to include such additional sum.

- (24) President Pro Tempore of the Senate 4,800.00
- The President Pro Tempore of the Senate shall also receive the salary and allowances authorized as a member of the General Assembly.
- (25) Speaker Pro Tempore of the House of Representatives 4,800.00

The Speaker Pro Tempore of the House of Representatives shall also receive the salary and allowances authorized as a member of the General Assembly.

(b) As a cost-of-living adjustment except as qualified below as to members and member-officers of the General Assembly, the annual salary of each state official whose salary is established by Code Section 45-7-3, this Code section, and Code Sections 45-7-20 and 45-7-21, including members of the General Assembly, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Speaker Pro Tempore of the House of Representatives, may be increased by the General Assembly in the General Appropriations Act by a percentage not to exceed the average percentage of the general increase in salary as may from time to time be granted to employees of the executive, judicial, and legislative branches of government. However, any increase for such officials shall not include within-grade step increases for which employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 are eligible. Any increase granted pursuant to this subsection shall become effective at the same time that funds are made available for the increase for such employees, except increases for members and member-officers of the General Assembly. That portion of the increase determined by the Legislative Services Committee to reflect a cost-of-living increase based upon objective economic criteria shall become effective for members and member-officers at the same time that funds are made available for the increase for such employees. The balance of the increase for members and member-officers of the General Assembly shall become effective on the convening of the next General Assembly in January of the next odd-numbered year. The Office of Planning and Budget shall calculate the average percentage increase.

(c) The annual salary being received on June 30, 1980, shall be increased by 8 percent for each state official listed in subsection (a) of this Code section who:

- (1) Is not a member of the General Assembly; and
- (2) Is not a contributing member of a state retirement system and, therefore, does not benefit by or participate in any program

whereunder a portion of the employee contributions to the state retirement system are made on behalf of the employee by the employer. (Ga. L. 1973, p. 701, § 2; Ga. L. 1978, p. 4, § 2; Ga. L. 1978, p. 902, § 1; Ga. L. 1980, p. 756, § 1; Ga. L. 1980, p. 758, § 1; Ga. L. 1980, p. 925, § 19; Ga. L. 1981, p. 894, § 1; Ga. L. 1982, p. 1255, § 1; Ga. L. 1983, p. 3, § 34; Ga. L. 1983, p. 719, § 1; Ga. L. 1983, p. 1401, § 20; Ga. L. 1983, p. 1831, §§ 1-3; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 444, § 1; Ga. L. 1984, p. 717, § 1; Ga. L. 1984, p. 808, §§ 1, 2; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 493, § 1; Ga. L. 1985, p. 524, § 1; Ga. L. 1985, p. 672, §§ 1, 2; Ga. L. 1986, p. 877, § 1; Ga. L. 1988, p. 154, § 1; Ga. L. 1988, p. 284, § 2; Ga. L. 1989, p. 212, § 1; Ga. L. 1989, p. 579, § 5; Ga. L. 1991, p. 1363, § 1; Ga. L. 1992, p. 6, § 45; Ga. L. 1994, p. 851, §§ 1, 2; Ga. L. 1994, p. 1065, § 1; Ga. L. 1995, p. 10, § 45; Ga. L. 1995, p. 1018, §§ 1, 2; Ga. L. 1996, p. 1302, § 2; Ga. L. 1999, p. 910, § 4; Ga. L. 1999, p. 1213, §§ 5, 6, 7; Ga. L. 1999, p. 1242, §§ 2, 2.1; Ga. L. 2001, p. 783, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2006, p. 414, § 5/HB 268; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-69/HB 642.)

The 2006 amendment, effective July 1, 2006 substituted “107,905.00” for “88,635.00” in paragraph (a)(21).

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the end of the second sentence of subsection (b).

The 2012 amendment, effective July 1, 2012, substituted “General Appropriations Act” for “general appropriations Act” in the first sentence of subparagraph (a)(22)(D); and substituted “employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4” for “classified employees of the State Personnel Administration” in the second sentence of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

Superior court judge was state employee. — Trial court did not err in determining that a deceased Georgia superior court judge was a State of Georgia employee but not a county employee for purposes of the exclusive remedy provision under O.C.G.A. § 34-9-11(a) of the Georgia Workers’ Compensation Act in a claim by the judge’s widow against county sheriffs, arising from the murder of the judge while in a courtroom, as the judge was

vested with the judicial power of the State of Georgia under Ga. Const. 1983, Art. VI, Sec. I, Para. I and was defined as a “state official” pursuant to O.C.G.A. § 45-7-4(a)(20) for compensation purposes; the fact that the county asserted that the widow could obtain workers compensation benefits and that it offered her the judge’s funeral expenses, both of which sums the widow refused, or that it contributed a supplemental amount to the

judge's salary, did not make the judge a county employee. *Freeman v. Barnes*, 282 Ga. App. 895, 640 S.E.2d 611 (2006).

45-7-7. Compensation and allowances of certain officials not to be changed without giving public notice.

(a) The compensation or allowances of the officials listed in subsection (b) of this Code section shall not be changed by the governing board or body having the authority to do so unless public notice of such proposed action and amount shall have been given at least 30 days prior to the date such board or body shall consider such action and unless notice of such proposed change shall have likewise been given to the Governor by the board or body at least 30 days prior to the date of such proposed change.

(b) Subsection (a) of this Code section shall apply to the compensation and allowances of the commissioner of community affairs, the director of the Employees' Retirement System of Georgia, the director of the State Forestry Commission, the director of the Georgia Bureau of Investigation, the executive director of the Georgia Franchise Practices Commission, the commissioner of human services, the commissioner of economic development, the commissioner of natural resources, the commissioner of public safety, the chancellor of the University System of Georgia, the president or executive director of the Georgia Student Finance Commission, the executive director of the State Soil and Water Conservation Commission, the executive secretary-treasurer of the Teachers Retirement System of Georgia, the commissioner of transportation, and the executive director of the Georgia Government Transparency and Campaign Finance Commission. (Ga. L. 1979, p. 392, §§ 1, 2; Ga. L. 1988, p. 269, § 28; Ga. L. 1989, p. 1641, § 10; Ga. L. 2002, p. 415, § 45; Ga. L. 2004, p. 690, § 15; Ga. L. 2005, p. 599, § 8/SB 146; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 1173, § 27/SB 17.)

The 2004 amendment, effective July 1, 2004, substituted "commissioner of economic development" for "commissioner of industry, trade, and tourism" near the middle of subsection (b).

The 2005 amendment, effective July 1, 2005, deleted "of investigation" preceding "the Georgia Bureau of Investigation" in subsection (b).

The 2009 amendment, effective July 1, 2009, substituted "commissioner of human services" for "commissioner of human resources" near the middle of subsection (b).

The 2010 amendment, effective January 10, 2011, substituted "Georgia Gov-

ernment Transparency and Campaign Finance Commission" for "State Ethics Commission" in the last sentence of subsection (b). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

ARTICLE 2

REIMBURSEMENT OF EXPENSES

45-7-20. Reimbursement of travel costs for certain officials.

Editor's notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel re-

imbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-7-21. Expense allowance and travel cost reimbursement for members of certain boards and commissions.

(a) Each member of the boards and commissions enumerated in this Code section shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of a board or commission is in attendance at a meeting of such board or commission, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance. The expense allowance and reimbursement provided for in this Code section shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. The existing law relative to any limitation on the number of meeting days and remuneration for service on committees or subcommittees of any such board or commission shall remain in effect. The boards and commissions to which this Code section shall be applicable are as follows:

- (1) State Board of Education;
- (2) Board of Regents of the University System of Georgia;
- (3) Board of Corrections;
- (4) Board of Economic Development;
- (5) Board of Natural Resources;
- (6) State Transportation Board;
- (7) Dental Education Board;
- (8) Georgia Student Finance Commission;
- (9) Veterans Service Board;
- (10) Georgia Agricultural Exposition Authority;
- (11) Georgia Board for Physician Workforce;
- (12) Georgia Music Hall of Fame Authority;

- (13) Georgia Sports Hall of Fame Authority;
- (14) Georgia Rail Passenger Authority;
- (15) Georgia Tobacco Community Development Board;
- (16) State Board of the Technical College System of Georgia;
- (17) Civil War Commission; and

(18) The delegation from the State of Georgia to the Southern Dairy Compact Commission.

(b) Whenever this Code section or any other law of this state provides that members of any board, commission, or other body shall receive the same daily expense allowance as members of the General Assembly, whether by specific reference to this Code section or any other law or by a more general reference, the members of such board, commission, or other body shall receive a daily expense allowance of \$105.00. Such \$105.00 amount shall apply for members of such boards, commissions, and other bodies, regardless of whether the amount actually received by members of the General Assembly under Code Section 28-1-8 is more or less than \$105.00. The provisions of this subsection shall control over any conflicting provisions of any other earlier enacted law. (Ga. L. 1973, p. 701, § 4; Ga. L. 1978, p. 4, § 4; Ga. L. 1984, p. 427, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1989, p. 1641, § 11; Ga. L. 1990, p. 6, § 2; Ga. L. 1990, p. 1320, § 1; Ga. L. 1993, p. 809, § 2; Ga. L. 1994, p. 1251, § 2; Ga. L. 1995, p. 1041, § 2; Ga. L. 1999, p. 721, § 1.1; Ga. L. 1999, p. 1242, § 3; Ga. L. 1999, p. 1249, § 2; Ga. L. 2000, p. 1344, § 1; Ga. L. 2001, p. 924, § 1; Ga. L. 2004, p. 690, § 16; Ga. L. 2007, p. 47, § 45/SB 103; Ga. L. 2011, p. 459, § 4/HB 509; Ga. L. 2011, p. 632, § 3/HB 49.)

The 2004 amendment, effective July 1, 2004, substituted “Board of Economic Development” for “Board of Industry, Trade, and Tourism” in paragraph (a)(5).

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (a)(16.1) as paragraph (a)(17), and deleted “and” from the end; added paragraph (a)(18); and redesignated former paragraph (a)(17) as paragraph (a)(19).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, in subsection (a), deleted former paragraph (a)(2), which read: “State Medical Education Board;” and redesignated for-

mer paragraphs (a)(3) through (a)(19) as present paragraphs (a)(2) through (a)(18), respectively. The second 2011 amendment, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in paragraph (a)(16).

Editor’s notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel reimbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-7-22. Reimbursement for relocation expenses — Authorization generally.

Notwithstanding any law, rule, or regulation to the contrary, a state department may reimburse an employee of state government for expenses incurred for transportation of household goods and expenses incident to a change of residence from one part of the state to another as a result of an action of the state department requiring such relocation when such action is in the best interest of the department; provided, however, that the Department of Economic Development may also reimburse an employee of that department for transportation of household goods and expenses incident to a change of residence to a foreign country as a result of an action of that department requiring such relocation when such action is in the best interest of that department. (Ga. L. 1973, p. 708, § 1; Ga. L. 1981, p. 429, § 1; Ga. L. 1989, p. 1641, § 12; Ga. L. 2004, p. 690, § 17.)

The 2004 amendment, effective July 1, 2004, substituted “Department of Economic Development” for “Department of

Industry, Trade, and Tourism” near the middle of this Code section.

45-7-28.1. Employee travel reimbursement; rules and regulations to be issued by the Department of Audits and Accounts and the Office of Planning and Budget.

Reserved. Repealed by Ga. L. 2005, p. 694, § 35/HB 293, effective July 1, 2005.

Editor’s notes. — This section was based on Ga. L. 1979, p. 1365; Code 1981, § 45-7-28.1, enacted by Ga. L. 1982, p. 3, § 45; Ga. L. 1990, p. 8, § 45.

45-7-29. Reimbursement for expenses of lodging and air fare — Supporting documentation required.

Editor’s notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel reimbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-7-30. Reimbursement for expenses of lodging and air fare — Reimbursement of first-class air fare.

Editor’s notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel reimbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-7-31. Reimbursement for expenses of lodging and air fare — Per diem allowances.

Editor's notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel re-

imbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-7-32. Unlawful use of travel advance received from public funds for nongovernmental purposes; fraudulent request for reimbursement of expenses; penalty for violations.

(a) It shall be unlawful for any person to use any travel advance received from public funds for nongovernmental purposes or to submit or approve, knowingly or through willful and wanton neglect, a fraudulent request to the state for reimbursement of expenses.

(b) Any person who, in violation of subsection (a) of this Code section, uses any travel advance for nongovernmental purposes or submits or approves, knowingly or through willful and wanton neglect, a fraudulent request for reimbursement of expenses valued in the aggregate at less than \$500.00 shall be guilty of a misdemeanor of a high and aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00. In addition to the foregoing criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such misappropriated travel advances or fraudulent reimbursements, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each misappropriated travel advance or fraudulent reimbursement payment was made.

(c) Any person who, in violation of subsection (a) of this Code section, uses any travel advance for nongovernmental purposes or submits or approves knowingly, or through willful and wanton neglect, a fraudulent request for reimbursement of expenses valued in the aggregate at \$500.00 or more shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of such misappropriated travel advances or fraudulent reimbursement payments, whichever is greater. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such misappropriated travel advances or fraudulent reimbursements, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each misappropriated travel advance or fraudulent reimburse-

ment payment was made. (Ga. L. 1978, p. 1919, § 4; Ga. L. 2008, p. 776, § 3/HB 1113.)

The 2008 amendment, effective July 1, 2008, substituted the present provisions of this Code section for the former, which read: “Any person who intentionally violates Code Sections 45-7-29 through 45-7-31 shall be guilty of a misdemeanor.” See the Editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in subsection (a), a comma was deleted following “funds” and in subsection (b), a comma was deleted following “expenses” in the first sentence.

Editor’s notes. — Ga. L. 2008, p. 776, § 4, not codified by the General Assembly, provides that: “For the purpose of promulgating rules and regulations, policies, procedures, and manuals, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2008, and shall apply to all transactions occurring on and after such date.” The Governor approved this Act on May 14, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 45-7-32(a) are designated as offenses for

which those charged are to be fingerprinted. 2009 Op. Att’y Gen. No. 2009-1.

ARTICLE 3

SALARY DEDUCTIONS

45-7-54. Voluntary contributions by state government employees through payroll deductions to certain not for profit organizations.

(a) Any department, agency, authority, or commission of the state is authorized to deduct designated amounts from the salaries or wages of its employees and remit such moneys to not for profit organizations, associations, or corporations providing tangible services and benefits to state government or its employees. Except as provided in subsection (b) of this Code section, no such deduction shall be made unless at least 2,500 of the full-time employees of the state request such deduction. Where 2,500 or more full-time employees of the state request payroll deduction services to any not for profit organization, association, or corporation having among its objectives educational, legislative, or professional development activities related to promoting and enhancing the efficiency, productivity, and welfare of state government services or of state government employees, then the state shall provide such deductions as an additional employment benefit to its employees.

(b) Where 500 or more full-time state employees who are employed in the Division of Family and Children Services or in the law enforcement, corrections officer, or registered nursing disciplines request payroll deduction services to any not for profit association having among its

specific objectives (1) professional development activities related to such employment, (2) the provision of assistance to or on behalf of persons who are killed, injured, in need of medical attention, or otherwise in need of assistance while engaged in such employment or as a result of such employment, or (3) promoting or enhancing law enforcement, corrections, or registered professional nursing in the State of Georgia, then the state shall provide such deductions as an additional employment benefit to its employees. This provision shall not be interpreted to require the agency or state to provide the funds for any employee's dues or contributions.

(c) The commissioner of administrative services shall have the authority to administer this Code section and to determine and compel compliance with its provisions.

(d) No deduction shall be made under this Code section without the express written and voluntary consent of the employee. Each such request shall designate the exact amount to be deducted. Any employee who consents to such deduction is authorized to terminate the deduction with two weeks' written notice to the department, agency, authority, or commission.

(e) No deduction shall be made under this Code section to any organization, association, or corporation which engages in collective bargaining with the state or encourages its members to strike or stop work.

(f) Each department, agency, authority, or commission of the state shall collect from the deductions withheld a cost of administration fee not to exceed 1 percent of the total deduction collected.

(g) No person shall disclose to any other person the name of any employee deducting amounts, or the organizations, associations, or corporations designated, except as is necessary to accomplish the purpose of this article or as otherwise authorized in writing by the individual employee.

(h) Departments, agencies, authorities, and commissions and their employees shall not incur any liability for errors or omissions made in performance of the payroll deduction agreement between the state and the employee, provided that this Code section does not confer immunity from criminal or civil liability for conversion, theft by conversion, theft by taking, theft by extortion, theft by deception, or any other intentional misappropriation of the money or property of another. (Code 1981, § 45-7-54, enacted by Ga. L. 1994, p. 699, § 1; Ga. L. 1995, p. 831, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2005, p. 466, § 1/HB 183; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-70/HB 642.)

The 2005 amendment, effective July 1, 2005, in subsection (b), inserted “, corrections officer,” following “law enforcement”, inserted “(1)” following “objectives”, inserted “(2) the provision of assistance to or on behalf of persons who are killed, injured, in need of medical attention, or otherwise in need of assistance while engaged in such employment or as a result of such employment, or (3)” following “related to such employment”, and inserted “, corrections,” following “or enhancing law enforcement” in the first sentence.

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” near the beginning of subsection (c).

The 2012 amendment, effective July

1, 2012, substituted “commissioner of administrative services” for “commissioner of the State Personnel Administration” in subsection (c).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-7-57. Deduction from wages for contributions into savings trust accounts.

(a) Any department, agency, authority, commission, or other instrumentality of the state is authorized to deduct designated amounts from the wages or salaries of its employees and remit such moneys to one or more savings trust accounts established under Article 11 of Chapter 3 of Title 20.

(b) No payroll deduction shall be made under this Code section without the employee’s written and voluntary consent designating the exact amount to be deducted.

(c) Any employee who has authorized a deduction under this Code section is authorized to end such salary deduction upon written notice to the employer.

(d) The fiscal authorities or other employees of the various departments, agencies, authorities, commissions, or other instrumentalities of this state shall incur no liability for errors or omissions made in the administration of payroll deductions authorized under this Code section. (Code 1981, § 45-7-57, enacted by Ga. L. 2004, p. 594, § 1.)

Effective date. — This Code section became effective May 13, 2004.

CHAPTER 8

ACCOUNTING FOR PUBLIC FUNDS

Sec.

45-8-1. Definitions.

45-8-13.1. Depositories using pooled method of securing deposits of public funds; qualifications; rights and responsibilities of state treasurer.

Sec.

45-8-17. Deposit of funds in banks or depositories — Liability of public authorities or members thereof for official actions.

45-8-1. Definitions.

As used in this chapter, the term:

(1) "Collecting officer" means any person who is either generally or specifically elected, appointed, or employed, in whole or in part, to collect any tax, revenue, or other moneys on behalf of the state or any of its political subdivisions or on behalf of any board, commission, bureau, or department thereof. The term shall not mean any state, municipality, or county tax collector or revenue agent pursuant to Title 48.

(2) "County authority" means the judge of the probate court or the board of county commissioners or other tribunal, body, or officer having jurisdiction over the fiscal affairs of the county.

(3) "Custodian" means the state treasurer or any bank, savings association, or trust company that:

(A) Is organized and existing under the laws of this state, any other state, or the United States;

(B) Has executed all forms required under this chapter or any rule adopted under this chapter;

(C) Agrees to be subject to the jurisdiction of the courts of this state or of courts of the United States which are located within this state for the purpose of any litigation arising out of this chapter; and

(D) Has been approved by the state treasurer to act as a custodian;

and which holds a pool of collateral for public deposits established by a depository pursuant to Code Section 45-8-13.

(4) "Daily pool balance" means the daily balance of deposits of public funds held by a depository which balance is secured by the pooled method as specified in paragraph (2) of subsection (b) of Code

Section 45-8-13. Insured deposits and deposits of public funds for which no collateral is required under subsection (b) or (d) of Code Section 45-8-12 or special deposits and operating funds for which collateral has been duly waived pursuant to subsection (b) of Code Section 45-8-11 or paragraph (3) of Code Section 50-17-53 shall be excluded from the balance of deposits of public funds for purposes of determining the daily pool balance.

(5) "Default" includes, without limitation, the failure or refusal of a public depository to pay any check or warrant drawn upon sufficient and collected funds by any public depositor or to return any deposit on demand or at maturity together with interest as agreed; the issuance of an order by any supervisory authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

(6) "Depository" means any bank designated, named, or appointed from time to time:

(A) By the State Depository Board as qualified to serve as a depository of state funds pursuant to Code Section 50-17-50;

(B) By county authorities or others as depositories for county and other public funds pursuant to Code Section 45-8-14; or

(C) By collecting officers and officers holding public funds as a depository for public funds pursuant to Code Section 45-8-11.

(7) Reserved.

(8) "Officer to hold public funds" means not only the state treasurer, municipality or county treasurers, the State School Superintendent, municipality or county school superintendents, and treasurers of school districts, but also every other person, by whatever name or title called, who shall be either generally or specially elected, appointed, or employed with the duty, in whole or in part, to receive, hold, or disburse any public money or revenue on behalf of the state or any of its political subdivisions or on behalf of any board, commission, bureau, or department.

(9) "Proper authority" means the officer, board, commission, or other tribunal or body having the jurisdiction to act in the particular matter.

(10) "Public body" means not only the state, municipalities, counties, school districts, drainage districts, and other districts created for special purposes, but also every other political subdivision of the state and every board, bureau, commission, and department of the state or any subdivision thereof, as the context may require.

(11) "State authority" means the officer or officers or board, bureau, commission, or other person or persons who, in their official capacity,

shall have, according to the laws of this state, the duty or jurisdiction to act on behalf of the state in the particular matter. (Ga. L. 1933, p. 78, § 2; Code 1933, § 89-801; Ga. L. 1993, p. 1402, § 18; Ga. L. 1997, p. 868, § 1; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in paragraphs (3), (7), and (8) and substituted “state treasurer” for “director” in subparagraph (3)(D) and “State treasurer” for “Director” in paragraph (7).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “Reserved” for the former provisions of paragraph (7), which read: “‘State treasurer’ means the state treasurer.”

45-8-13.1. Depositories using pooled method of securing deposits of public funds; qualifications; rights and responsibilities of state treasurer.

(a) Only depositories which have met the qualifications imposed by this Code section may use the pooled method. If a depository elects the pooled method, it shall notify the state treasurer in writing of its desire to utilize the pooled method and the proposed effective date thereof and provide to the state treasurer executed copies of the custodial agreement, resolution, and other agreements and data as may be required by the state treasurer. Upon meeting the qualifications of this Code section, the state treasurer shall issue a certificate of qualification, and such bank or trust company shall become a depository permitted to use the pooled method.

(b) The aggregate of the market value of the securities pledged to secure a pool of public funds shall be not less than 110 percent of the daily pool balance.

(c)(1) A depository may not retain any deposit of public funds which is required to be secured unless, within ten days thereafter or such shorter period as has been agreed upon by the depository and the public depositors secured by the pool, it has deposited for the benefit of the pool eligible collateral equal to its required collateral pursuant to this Code section.

(2) For reporting purposes, each depository using the pooled method shall determine the market value of its collateral. Each depository shall provide such monthly reports to the state treasurer as the state treasurer shall require.

(3) A depository may not substitute or withdraw collateral previously pledged as part of a pool without the prior approval of the state treasurer. The state treasurer shall grant such approval if:

(A) In the case of substitution of collateral, the market value of the substituted collateral is equal to or greater than the market value of the collateral withdrawn; and

(B) In the case of withdrawal of collateral:

(i) The depository certifies in writing that such withdrawal will not reduce its collateral below its required collateral; and

(ii) This certification is substantiated by a statement of the depository's current daily pool balance that indicates that after withdrawal such deposits will continue to be secured to the full extent required by law.

(d) The state treasurer shall be authorized to delegate to any bank, savings association, trust company, or other qualified firm, corporation, or association which is authorized to transact business in the State of Georgia such of its rights and responsibilities with respect to the pooled method as the state treasurer deems appropriate including, without limitation, the right to approve or disapprove any substitutions or withdrawals permitted under this Code section. Fees and expenses of the bank, savings association, trust company, or other qualified firm, corporation, or association to which the state treasurer delegates his or her rights and responsibilities under this subsection shall be paid by the depositories using the pooled method.

(e) The state treasurer, upon a default by a depository using the pooled method, shall request immediate delivery of such part of the pooled, pledged collateral as may be needed to hold the state treasurer or any public depositor harmless from losses incurred by the default. The state treasurer shall have full discretion as to the amounts and securities to be delivered. The state treasurer shall sell as much of the collateral as is needed to provide cash to cover the amount of the default and expenses resulting therefrom. From the proceeds of the sale of such collateral, the state treasurer shall pay any amounts owing to public depositors who participated in the pooled fund of the defaulting depository. Public depositors whose deposits are secured by a pledging pool of a defaulting depository shall look solely to the assets of such pledging pool and to the assets of the defaulting depository and shall have no claim, ex contractu or otherwise, against the state, other depositories, or the assets of pledging pools created by other depositories.

(f) In addition to all of the rights provided to the state treasurer in this chapter, the state treasurer shall have the following powers:

(1) To adopt such rules and prescribe such forms as may be necessary to accomplish the purposes of this chapter;

(2) To decline, accept, or reduce the reported value of collateral, as circumstances may require, in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this chapter;

(3) To suspend or disqualify any custodian or depository that has violated any provision of this chapter or any rule adopted pursuant to this chapter;

(4) To require depositories to furnish detailed monthly reports of public deposits held by depositors' names, addresses, amounts, and any additional information requested by the state treasurer;

(5) To confirm deposits of public funds to the extent possible under current law; and

(6) To monitor and confirm as often as deemed necessary by the state treasurer the pledged collateral held by third-party custodians.

(g) Neither the provisions of this chapter nor the exercise of any right or duty by the state treasurer authorized or permitted by Code Section 45-8-13 or this Code section shall be construed as a waiver of sovereign immunity. (Code 1981, § 45-8-13.1, enacted by Ga. L. 1997, p. 868, § 3; Ga. L. 2010, p. 863, § 4/SB 296; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" throughout this Code section.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modern-

ize, and correct the Code, substituted "state treasurer delegates his or her rights" for "state treasurer delegates its rights" in the last sentence of subsection (d).

45-8-17. Deposit of funds in banks or depositories — Liability of public authorities or members thereof for official actions.

No proper authority, including the state treasurer, nor any member of a board or tribunal constituting such a proper authority shall, where acting in good faith, incur any liability by reason of designating any depository, permitting deposits of public funds to be collateralized by the direct method or the pooled method, administering or regulating the pooled method, or taking any other official action required of such proper authority under this chapter. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-815; Ga. L. 1997, p. 868, § 4; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for

"director" near the beginning of this Code section.

CHAPTER 9

INSURING AND INDEMNIFICATION OF PUBLIC OFFICERS AND EMPLOYEES

Article 1

State Officers and Employees

- Sec.
45-9-1. (Effective until January 1, 2013. See note.) General provisions; disclosure of insurance or indemnification in legal action.
- 45-9-1. (Effective January 1, 2013. See note.) General provisions.
- 45-9-3. Insurance and other protections afforded personnel employed by district attorney.
- 45-9-4. Commissioner of administrative services to purchase insurance or indemnity contracts; self-insurance program; Hazardous Materials Liability Reserve Fund; insurer becoming insolvent; provision of liability coverage to nonprofit agencies and employees contracting with certain state agencies.
- 45-9-4.2. Liability coverage for nonprofit agencies providing services to the developmentally disabled.

Article 2

Members of Governing Bodies of Municipalities, Counties, and Other Public Bodies

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PART 1

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ARTICLE 1

STATE OFFICERS AND EMPLOYEES

45-9-1. (Effective until January 1, 2013. See note.) General provisions; disclosure of insurance or indemnification in legal action.

(a) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reim-

bursement to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the state for reasonable legal fees and other expenses incurred in the successful defense of any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties. In addition, in the case of an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his or her official duties in proceedings before a professional licensing board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

(b) Such agencies, boards, bureaus, commissions, departments, or authorities may expend federal and state or other available funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of such agency, board, bureau, commission, department, or authority.

(c) For the purpose of this article, the term "agency" shall specifically include, but shall not be limited to, public retirement systems of state-wide application established by the laws of this state, but shall not include counties or municipalities; provided, however, that the employees of community service boards, county departments of health, and county departments of family and children services as well as the members of the boards of said departments shall be considered to be state employees or officials for the purpose of this article. In order to facilitate the administration of liability coverage or other insurance coverages provided the community service boards, the Department of Behavioral Health and Developmental Disabilities shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of family and children services, the Department of Human Services shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of health, the Department of Public Health shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services.

(d) The existence of such insurance or indemnification shall not be disclosed or suggested in any action brought against such individual. (Ga. L. 1977, p. 1051, § 1; Ga. L. 1979, p. 674, § 1; Ga. L. 1981, p. 1383, § 1; Ga. L. 1987, p. 993, § 1; Ga. L. 1994, p. 1717, § 3; Ga. L. 2008, p. 230, § 1/SB 175; Ga. L. 2009, p. 453, § 1-49/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2008 amendment, effective July 1, 2008, in subsection (a), substituted “any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties” for “a criminal action arising out of the performance of his official duties” near the end of the second sentence and inserted “or her” in the third sentence.

The 2009 amendment, effective July 1, 2009, in subsection (c), substituted “boards, the Department of Behavioral Health and Developmental Disabilities shall designate a central office which shall

be” for “boards, county departments of health, and county departments of family and children services, the Department of Human Resources must designate a central office which will be” in the second sentence, and added the last two sentences.

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the last sentence of subsection (c).

Editor’s notes. — Code Section 45-9-1 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

45-9-1. (Effective January 1, 2013. See note.) General provisions.

(a) (Effective January 1, 2013. See note.) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reimbursement to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of this state for reasonable legal fees and other expenses incurred in the successful defense of any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties. In addition, in the case of

an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his or her official duties in proceedings before a professional licensing board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

(b) Such agencies, boards, bureaus, commissions, departments, or authorities may expend federal and state or other available funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of such agency, board, bureau, commission, department, or authority.

(c) For the purpose of this article, the term “agency” shall specifically include, but shall not be limited to, public retirement systems of state-wide application established by the laws of this state, but shall not include counties or municipalities; provided, however, that the employees of community service boards, county departments of health, and county departments of family and children services as well as the members of the boards of said departments shall be considered to be state employees or officials for the purpose of this article. In order to facilitate the administration of liability coverage or other insurance coverages provided the community service boards, the Department of Behavioral Health and Developmental Disabilities shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of family and children services, the Department of Human Services shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of health, the Department of Public Health shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services. (Ga. L. 1977, p. 1051, § 1; Ga. L. 1979, p. 674, § 1; Ga. L. 1981, p. 1383, § 1; Ga. L. 1987, p. 993, § 1; Ga. L. 1994, p. 1717, § 3; Ga. L. 2008, p. 230, § 1/SB 175; Ga. L. 2009, p. 453, § 1-49/HB 228; Ga. L. 2011, p. 99, § 85/HB 24; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendments. — The first 2013, substituted “this state” for “the 2011 amendment, effective January 1, state” in the middle of the second sentence

of subsection (a); and deleted subsection (d), which read: "The existence of such insurance or indemnification shall not be disclosed or suggested in any action brought against such individual." See editor's note for applicability. The second 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the last sentence of subsection (c).

Editor's notes. — Code Section 45-9-1 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

45-9-3. Insurance and other protections afforded personnel employed by district attorney.

Personnel employed by the district attorneys of the state, irrespective of the source of the funds used to pay such personnel, may be covered by any liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs administered by the commissioner pursuant to this article and, for the purpose of this article, such personnel employed by a district attorney shall be considered to be state employees. The commissioner of administrative services shall prescribe the terms and conditions under which any liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs administered by the commissioner pursuant to this article shall be made available to personnel employed by a district attorney. The cost of such liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs shall be paid by the Prosecuting Attorneys' Council of the State of Georgia out of such funds as may be appropriated to or otherwise available for the operations of district attorneys. (Ga. L. 1980, p. 399, § 1; Ga. L. 2004, p. 988, § 3.)

The 2004 amendment, effective May 17, 2004, rewrote this Code section.

45-9-4. Commissioner of administrative services to purchase insurance or indemnity contracts; self-insurance program; Hazardous Materials Liability Reserve Fund; insurer becoming insolvent; provision of liability coverage to nonprofit agencies and employees contracting with certain state agencies.

(a) When the commissioner of administrative services determines that an adequate number of agencies, boards, bureaus, commissions, departments, or authorities of this state have requested the commis-

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

sioner to do so, the commissioner shall have the authority to purchase policies of liability insurance, reinsurance, or contracts of indemnity insuring or indemnifying the officers, officials, or employees of such agencies, boards, bureaus, commissions, departments, or authorities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, under a master policy or on a blanket coverage basis with or without deductibles or excess coverage. The commissioner may provide for endorsements for contractual liability and, where necessary or convenient to the public functions of the state, the commissioner may also provide for additional insureds. In such event, the commissioner may alternatively retain all moneys paid to the Department of Administrative Services as premiums on such policies of liability insurance or contracts of indemnity, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the payment of such liability under, and the expenses necessary to administer properly, a self-insurance program. If the commissioner decides to institute a self-insurance program, the commissioner shall establish and maintain a reserve fund for the payment of liabilities arising out of claims against officers, officials, and employees of the state and for any additional insureds. The commissioner shall also charge to state entities such premiums, deductibles, and other payments taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. The commissioner is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the liability trust fund provided for in this Code section. Any amounts held by the commissioner which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the self-insurance program. The state treasurer shall invest these funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the self-insurance program. When moneys are paid over to the Office of the State Treasurer, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

(b) On April 19, 1994, the commissioner of administrative services shall transfer all funds from the Hazardous Materials Liability Reserve Fund into the State Tort Claims Trust Fund established pursuant to Article 2 of Chapter 21 of Title 50.

(c) If the insurer of any liability policy purchased for the benefit of the officers and employees of the state or state authorities shall become or has become insolvent, be placed into receivership, be subject to any other delinquency or bankruptcy proceeding, cancel its policies, or take or have taken against it like actions, the commissioner of administrative services may protect such employees against loss by such means as he may determine, including without limitation undertaking to cover, insure, or self-insure the corresponding liabilities and expenses, including without limitation claims, contingent claims, and incurred but unreported claims. However, the commissioner shall incur no obligation beyond the funds then available for commitment to the obligation. For these purposes the commissioner may proceed against such insurer, its receiver, or other representative and any other appropriate person by means of the state's own claim or by assignment, subrogation, or otherwise.

(d) The commissioner of administrative services is authorized in his discretion either to purchase commercial insurance coverage or to self-insure under an existing self-insurance trust fund all foster parents and foster children participating in programs sponsored by the Department of Human Services or in the care and custody of the Department of Human Services upon a request from the commissioner of human services. The commissioner of administrative services will establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Human Services is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds.

(e) If requested by the Georgia State Finance and Investment Commission, the commissioner of administrative services is authorized, at the commissioner's discretion, to establish a consolidated insurance program to furnish general liability insurance, workers' compensation insurance, builders' risk insurance, or general liability and workers' compensation and builders' risk insurance for all contractors on a construction project (wrap up). The premium for such insurance shall be paid from funds appropriated by the General Assembly to construct the project, and, at the completion of a project, any savings attributable to the consolidated insurance program less administrative costs shall be returned by the Department of Administrative Services to the Georgia State Finance and Investment Commission.

(f) The commissioner of administrative services is authorized in his or her discretion either to purchase commercial insurance coverage or

to self-insure under an existing self-insurance trust fund all attention and contract homeparents and those youth participating in programs sponsored by the Department of Juvenile Justice or in the care and custody of the Department of Juvenile Justice upon a request from the commissioner of juvenile justice. The commissioner of administrative services shall establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Juvenile Justice is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds.

(g) The policy of insurance provided for in this Code section may also provide liability coverage to nonprofit agencies and their employees, which agencies have contracted with the Department of Juvenile Justice, the Department of Transportation, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services to furnish certain services; provided, however, that such liability coverage shall be limited to damages arising out of the authorized use of a state-owned vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an employee of such nonprofit agency during the course of such person's employment with such nonprofit agency and the cost of such insurance furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency before any coverage shall be effective. For the purpose of this Code section, "nonprofit agency" means any nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code. (Ga. L. 1977, p. 1051, § 2; Ga. L. 1986, p. 150, § 1; Ga. L. 1987, p. 3, § 45; Ga. L. 1988, p. 1714, § 1; Ga. L. 1991, p. 1154, § 1; Ga. L. 1992, p. 2966, § 2; Ga. L. 1993, p. 416, § 1; Ga. L. 1994, p. 1717, § 4; Ga. L. 1997, p. 1453, §§ 1, 2; Ga. L. 2000, p. 1474, § 5; Ga. L. 2008, p. 245, §§ 1, 2/SB 425; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2010, p. 286, § 20/SB 244; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2008 amendment, effective July 1, 2008, added the fifth through seventh sentences of subsection (a) and added subsection (g).

The 2009 amendment, effective July 1, 2009, substituted "commissioner of human services" for "commissioner of human resources" at the end of the first sentence of subsection (d); and substituted "Department of Human Services" for "Department of Human Resources" throughout subsection (d) and in the first sentence of subsection (g).

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, inserted "the Department of Behavioral Health and Developmental Disabilities," in the middle of the first sentence of subsection (g). The second 2010 amendment, effective July 1, 2010, in subsection (a), substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" twice and substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" three times.

45-9-4.2. Liability coverage for nonprofit agencies providing services to the developmentally disabled.

(a) For the purposes of this Code section, the term “nonprofit agency” means a nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code.

(b) Nonprofit agencies and their employees, which agencies have contracted with the Department of Behavioral Health and Developmental Disabilities to furnish certain services to the developmentally disabled or have subcontracted with similar nonprofit agencies for the same, shall be provided protection against personal liability for damages sustained by third parties arising out of the provision of authorized services to the developmentally disabled by an employee of such agency during the course of such person’s employment with such nonprofit agency. The commissioner of administrative services shall prescribe the terms and conditions under which such nonprofit agencies and their employees shall be covered by any liability insurance policy or contract of indemnity or similar program administered by the commissioner pursuant to this article to provide such protection, provided the cost of such insurance, indemnity, or similar program furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency. (Code 1981, § 45-9-4.2, enacted by Ga. L. 1990, p. 1836, § 1; Ga. L. 2008, p. 245, § 3/SB 425; Ga. L. 2009, p. 453, §§ 3-2, 3-5/HB 228.)

The 2008 amendment, effective July 1, 2008, added “registered pursuant to Section 501(c)(3) of the Internal Revenue Code” at the end of subsection (a).

The 2009 amendment, effective July 1, 2009, in subsection (b), in the first sentence, substituted “Department of Behavioral Health and Developmental Dis-

abilities” for “Department of Human Resources”, and “developmentally disabled” for “mentally retarded” twice.

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (a), is codified as 26 U.S.C. § 501(c)(3).

45-9-5. Article not waiver of immunity from action or provision of liability insurance protection.

JUDICIAL DECISIONS

Waiver of sovereign immunity.

Fired state employee’s monetary claims against a state agency in federal court under the Age Discrimination in Employment Act, Title I of the Americans with Disabilities Act, and 42 U.S.C. § 1981 were dismissed because the General Assembly had not waived its sovereign immunity under the Eleventh Amendment

by enacting the Fair Employment Practices Act, O.C.G.A. § 45-9-5, which permitted a state agency to purchase insurance on behalf of the agency’s employees; passage of this section did not amount to the State of Georgia’s waiver of the state’s sovereign immunity in federal court because sovereign immunity could never be implicitly waived. *Jackson v. Oconee*

Cnty. Serv. Bd., No. 5:06-CV-55 (WDO),
2006 U.S. Dist. LEXIS 38057 (M.D. Ga.
June 8, 2006).

ARTICLE 2

MEMBERS OF GOVERNING BODIES OF MUNICIPALITIES, COUNTIES, AND OTHER PUBLIC BODIES

45-9-20. (Effective January 1, 2013. See note.) Authorization of purchase; actions against insurers or indemnitors.

In addition to any other compensation which may be paid to members of the governing bodies of municipalities, counties, and other public bodies, and to supervisors, administrators, employees, or other elected or appointed public officers, each municipality, county, and other public body of this state is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the members of such governing bodies and such supervisors, administrators, employees, or other elected or appointed officers against personal liability for damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or other statutory rights, whether state, federal, or local. Such municipalities, counties, and other public bodies may expend state, federal, and local funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of the governing body of such municipality, county, or other public body. No action shall be maintained against the person or company issuing such insurance or contracting for such indemnity until final judgment has first been entered against the individual covered by such policy or contract. (Ga. L. 1974, p. 702, § 1; Ga. L. 2011, p. 99, § 86/HB 24.)

Delayed effective date. — This Code section, as set out above, becomes effective on January 1, 2013. For version of this Code section in effect until January 1, 2013, see the bound volume.

The 2011 amendment, effective January 1, 2013, deleted “, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual” following “contract” at the end of the last sentence. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

45-9-21. Defense of civil, criminal, or quasi-criminal actions in lieu of insurance.

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Municipal court judges are not county officers. — Municipal court judges are not “county officers” entitled to have the county pay attorney fees pursuant to O.C.G.A. § 45-9-21(e)(2). *Ward v. City of Cairo*, 276 Ga. 391, 583 S.E.2d 821 (2003).

Discretion in selecting what actions to defend.

Where a local ordinance provided defense and indemnification to county employees who were the subject of lawsuits, but such coverage could be terminated by the county attorney, there was no abuse of discretion found by the county attorney’s termination of an employee’s coverage where the employee gave inaccurate or false responses to interrogatories and deposition questions regarding a prior position that the employee held; pursuant to O.C.G.A. § 45-9-21(a), the county attorney’s decision was based on a reasoned, articulated basis, the omission by the employee was deemed material, and it was determined that the information was de-

liberately withheld. *Baker v. Gwinnett County*, 267 Ga. App. 839, 600 S.E.2d 819 (2004).

County’s duty to pay attorney fees.

Statutory law authorized local governments and other “public bodies” to adopt employment policies whereby the local government agreed to provide representation to the local government’s employees if a conflict of interest existed and the matter did not involve property or money in which the governmental unit had an interest; since the sheriff was a local governmental unit employee who the trial court properly certified had a conflict of interest over the county commission’s adoption of a budget that harmed the sheriff’s department and that matter did not involve the government’s property or money, the trial court properly ruled that the sheriff had a right to have counsel appointed for the sheriff, and have the sheriff’s attorney fees and expenses paid, on the sheriff’s challenge to that budget. *Board of Comm’rs v. Saba*, 278 Ga. 176, 598 S.E.2d 437 (2004).

ARTICLE 3

EMPLOYEES OPERATING STATE MOTOR VEHICLES

45-9-40 through 45-9-43.

Reserved. Repealed by Ga. L. 2008, p. 245, § 4, effective July 1, 2008.

Editor’s notes. — This article consisted of Code Sections 45-9-40, 45-9-40.1, and 45-9-41 through 45-9-43 and was based on Ga. L. 1972, p. 347, §§ 1, 2; Ga. L. 1973, p. 1296, § 1; Ga. L. 1978, p. 256,

§ 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 310, § 1; Ga. L. 1990, p. 915, § 2; Ga. L. 1994, p. 307, § 1; Code 1981, § 45-9-40.1, enacted by Ga. L. 1994, p. 1717, § 5; Ga. L. 1997, p. 1453, § 1.

ARTICLE 4A

INDEMNIFICATION OF PUBLIC SCHOOL TEACHERS AND
EMPLOYEES**45-9-73. Indemnification commission created; composition; assignment to Department of Administrative Services for administrative purposes.**

There is created the Georgia Public School Personnel Indemnification Commission which shall be composed of the Governor, the State School Superintendent, the Secretary of State, the Commissioner of Insurance, the chairperson of the State Board of Education, the commissioner of public health, and one public school teacher and one public school employee to be appointed by the Governor and serve at the pleasure thereof. The Governor shall be the chairperson of the commission and the commission shall be assigned to the Department of Administrative Services for administrative purposes. (Code 1981, § 45-9-73, enacted by Ga. L. 2000, p. 768, § 2; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of community health” for “commissioner of human resources” in the first sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted “commissioner of pub-

lic health” for “commissioner of community health” in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

45-9-76. Georgia Public School Personnel Indemnification Fund — Revenues from sale of license plates; authorization to accept funds from other sources.

The Georgia Public School Personnel Indemnification Fund shall consist of revenues derived from the sale of special and distinctive motor vehicle license plates honoring Georgia educators issued prior to June 30, 2010 as provided by paragraph (7) of subsection (1) of Code Section 40-2-86. In addition, the Department of Administrative Services is authorized to accept for deposit in the Georgia Public School Personnel Indemnification Fund any other funds from any other source. All revenue or other funds received by the Georgia Public School Personnel Indemnification Fund shall not lapse. (Code 1981, § 45-9-76, enacted by Ga. L. 2000, p. 768, § 2; Ga. L. 2010, p. 9, § 1-84/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted “issued prior to June 30, 2010 as provided by paragraph (7) of

subsection (1) of Code Section 40-2-86” for “as provided by Code Section 40-2-86.5” at the end of the first sentence.

ARTICLE 5

LAW ENFORCEMENT OFFICERS, FIREMEN, PRISON GUARDS,
AND PUBLICLY EMPLOYED EMERGENCY MEDICAL
TECHNICIANS

PART 1

GEORGIA STATE INDEMNIFICATION FUND

45-9-80. Purpose of part.

Repealed by Ga. L. 2008, p. 470, § 1, effective July 1, 2008.

Editor's notes. — This Code section was based on Ga. L. 1978, p. 1914, § 1; Ga. L. 1980, p. 700, § 1; Ga. L. 1987, p. 822, § 1; Ga. L. 1991, p. 1312, § 1; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 1259, § 1.

Ga. L. 2008, p. 470, § 1, did not reenact

and did not strike Code Section 45-9-80 in this article.

Code Commission notes. — Ga. L. 2008, p. 470, § 1, reenacted Article 5 and omitted Code Section 45-9-80. Pursuant to Code Section 28-9-5, in 2008, this Code section has been treated as repealed.

45-9-81. Definitions.

As used in this part, the term:

(1) "Commission" means the Georgia State Indemnification Commission.

(2) "Department" means the Department of Administrative Services.

(3) "Emergency management rescue specialist" means any person licensed as an emergency management rescue specialist pursuant to Code Section 38-3-36.

(4) "Emergency medical technician" includes only persons who:

(A) Are certified as emergency medical technicians, paramedics, or cardiac technicians under Chapter 11 of Title 31; and

(B) Are employed in the capacity for which they are so certified by a department, agency, authority, or other instrumentality of state or local government.

(5)(A) "Firefighter" means any person who is employed as a professional firefighter on a full-time or part-time basis by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing

any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(B) "Firefighter" shall also mean any individual serving as an officially recognized or designated member of a legally organized volunteer fire department, or any employee of the Georgia Forestry Commission whose job duties include fire mitigation, who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(C) "Firefighter" shall also mean any individual employed by a person or corporation which has a contract with a municipal corporation or county to provide fire prevention and fire-fighting services to such municipal corporation or county and any such individual is employed on a full-time basis of at least 40 hours per week and has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal or county fire prevention codes, enforcing any municipal or county ordinances pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(6) "In the line of duty" means:

(A) With respect to an emergency medical technician or an emergency management rescue specialist, while on duty and when responding to or returning from an emergency or performing duties at the scene of an emergency or transporting a person to a medical facility for emergency treatment or returning therefrom;

(B) With respect to a volunteer firefighter, while on duty and when responding to or returning from a fire or other emergency or performing duties during any fire or other emergency or performing duties intended to protect life and property including, without limitation, actual participation in a training exercise;

(C) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement and fire service agency which employs such officer or firefighter, while off duty when responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer's or firefighter's death or bodily injury

causing total permanent disability or partial permanent disability shall not be considered in the line of duty if the officer or firefighter is entitled to workers' compensation benefits from the private employer or the private employer's insurer;

(D) With respect to a prison guard, while on duty and performing services for and receiving compensation from the public agency which employs such prison guard; or

(E) With respect to a state highway employee, while on duty and performing any work necessary for the construction, maintenance, or operation of a roadway on or within the public roads of the state as defined in paragraph (24) of Code Section 32-1-3 when such employee is killed or permanently disabled as the result of working under hazardous conditions in close proximity to moving traffic or equipment.

Such term shall not mean commuting to or from work or commuting to or from training.

(7) "Law enforcement officer" means any agent or officer of this state, a political subdivision or municipality of this state, or an authority of this state or a political subdivision of this state who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws with the power of arrest and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the employees designated by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision. Such term also includes members of the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3, who have been called into active state service by the Governor.

(8) "Organic brain damage" means direct physical trauma to the brain which so affects the mental capacity as to preclude function productively in any employment.

(9) "Partial permanent disability" means disability due to:

(A) Loss of the use of one eye or blindness in one eye with only light perception;

(B) Loss of one hand;

(C) Loss of one leg; or

(D) Loss of a lower extremity or the residual effect of an organic disease or injury which so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair for all but very short distances.

(10) "Prison guard" means any person employed by the state or any political subdivision thereof whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of this state or any political subdivision thereof. Such term shall also mean any probation supervisor or parole officer who is required to be certified under Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," and whose principal duties directly relate to the supervision of adult probationers or adult parolees. Such term also means any person employed by the state or any political subdivision thereof whose principal duties include the supervision of youth who are charged with or adjudicated for an act which if committed by adults would be considered a crime.

(11) "State highway employee" means an employee of the Georgia Department of Transportation who receives compensation directly therefrom and regularly engages in duties necessary for the construction, maintenance, or operation of roadways on or within the public roads of this state as defined in paragraph (24) of Code Section 32-1-3.

(12) "Total permanent disability" means disability due to:

(A) Loss of both eyes or blindness in both eyes with only light perception;

(B) Loss or loss of use of both hands;

(C) Loss or loss of use of both legs;

(D) Loss of a lower extremity or the residual effect of an organic disease or injury which so affects the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair at all times; or

(E) Organic brain damage. (Ga. L. 1978, p. 1914, § 2; Ga. L. 1980, p. 700, § 2; Ga. L. 1981, p. 477, § 1; Ga. L. 1983, p. 651, § 1; Ga. L. 1983, p. 1303, § 1; Ga. L. 1983, p. 1469, § 1; Ga. L. 1984, p. 762, §§ 1, 2; Ga. L. 1986, p. 1478, § 1; Ga. L. 1987, p. 822, § 2; Ga. L. 1988, p. 1923, § 10; Ga. L. 1990, p. 488, § 1; Ga. L. 1990, p. 646, § 1; Ga. L. 1991, p. 771, § 1; Ga. L. 1991, p. 1312, § 2; Ga. L. 1992, p. 1983, § 22; Ga. L. 1994, p. 1149, § 1; Ga. L. 1995, p. 877, § 1; Ga. L. 1996, p. 950, § 1; Ga. L. 1997, p. 1453, §§ 1, 2; Ga. L. 1998, p. 264, §§ 2, 3; Ga. L. 2000, p. 283, § 1; Ga. L. 2000, p. 951, § 12-10;

Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 1; Ga. L. 2002, p. 1259, §§ 2, 3; Ga. L. 2005, p. 334, § 27-1/HB 501; Ga. L. 2008, p. 470, § 1/SB 254; Ga. L. 2009, p. 8, § 45/SB 46.)

The 2005 amendment, effective July 1, 2005, deleted the former next-to-last sentence in paragraph (6), which read: "Such term also includes law enforcement officers of the Department of Motor Vehicle Safety."

The 2008 amendment, effective July 1, 2008, added paragraph (2); redesignated former paragraphs (2) through (6) as present paragraphs (3) through (7), respectively; rewrote paragraphs (5) and (6); in present paragraph (7), in the first sentence, substituted "state, a political subdivision or municipality of this state, or an authority of this state or a political subdivision of this state" for "state, or a political subdivision or municipality thereof," near the beginning and inserted

"with the power of arrest" near the middle; deleted former paragraph (7), which defined "Permanent disability"; added present paragraphs (8) and (9); redesignated former paragraphs (8) and (9) as present paragraphs (10) and (11), respectively; and added paragraph (12). See the editor's note for applicability.

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (6)(C).

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-82. Establishment of indemnification program.

(a) There is established a program to provide for indemnification with respect to the:

(1) Death of any law enforcement officer, firefighter, or prison guard who is or has been killed in the line of duty subsequent to January 1, 1973;

(2) Permanent disability of any law enforcement officer, firefighter, or prison guard who is or has been permanently disabled in the line of duty subsequent to January 1, 1973;

(3) Death or permanent disability of any emergency medical technician who is killed or permanently disabled or who has been killed or permanently disabled in the line of duty subsequent to January 1, 1977;

(4) Death or permanent disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991; and

(5) Death or permanent disability of any state highway employee who is killed or permanently disabled in the line of duty on or after January 1, 1990.

(b) Such program shall be administered by the department, subject to review by the commission. (Ga. L. 1978, p. 1914, § 3; Ga. L. 1980, p. 700, § 3; Ga. L. 1987, p. 822, § 3; Ga. L. 1991, p. 1312, § 3; Ga. L. 2002,

p. 660, § 4(16); Ga. L. 2002, p. 1259, §§ 4, 11(16); Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, substituted “by the department, subject to review by the commission” for “by the Georgia State Indemnification Commission” at the end of subsection (b). See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-83. Indemnification commission created; composition; assignment to Department of Administrative Services for administrative purposes; meetings.

There is created the Georgia State Indemnification Commission which shall be composed of the Governor, the executive director of the Peace Officer Standards and Training Council, the executive director of the Georgia Firefighter Standards and Training Council, the commissioner of public safety, the commissioner of transportation, the commissioner of corrections, the commissioner of public health, one law enforcement officer who shall be a member of the Peace Officers’ Association of Georgia appointed by the Governor from a list of five candidates provided by such organization, and one firefighter who shall be a member of the Georgia State Firemen’s Association appointed by the Governor from a list of five candidates provided by such organization. The Governor shall be the chairperson of the commission and the commission shall be assigned to the department for administrative purposes. The commission shall meet at least semiannually upon the call of the Governor. (Ga. L. 1978, p. 1914, § 4; Ga. L. 1984, p. 762, § 3; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1987, p. 822, § 4; Ga. L. 1988, p. 13, § 45; Ga. L. 2002, p. 1259, § 5; Ga. L. 2008, p. 470, § 1/SB 254; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2008 amendment, effective July 1, 2008, rewrote the first sentence; substituted “department” for “Department of Administrative Services” in the second sentence; and added the third sentence. See the editor’s note for applicability.

The 2009 amendment, effective July 1, 2009, substituted “commissioner of community health” for “commissioner of human resources” in the first sentence of this Code section.

The 2011 amendment, effective July

1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the first sentence of this Code section.

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

45-9-84. Commission to consider appeals of department decisions; correction of errors of material fact or abuse of discretion; use of personnel and resources of other agencies.

The commission is authorized to consider appeals of decisions of the department to correct errors made by the department in approving or denying any claim filed pursuant to this article. The commission may modify or override the decision of the department upon a showing of an error of material fact or an abuse of discretion. The department and the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties. (Ga. L. 1978, p. 1914, § 6; Ga. L. 1981, p. 477, § 3; Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470,

§ 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-84.1. Georgia State Indemnification Fund — Creation; administration; investment fund paid over to Office of the State Treasurer.

There is created a fund to be known as the Georgia State Indemnification Fund. The custodian of the Georgia State Indemnification Fund shall be the department. The department shall administer the Georgia State Indemnification Fund and shall approve or deny claims for compensation filed pursuant to this article; provided, however, that any decision of the department shall be subject to review by the commission as provided in Code Section 45-9-84. Any amounts held by the Georgia State Indemnification Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the Georgia State Indemnification Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the Georgia State Indemnification Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer. (Ga. L. 1981, p. 477, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1993, p. 1402, § 19; Ga. L. 2000, p. 1474, § 6; Ga. L. 2008, p. 470, § 1/SB 254; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2008 amendment, effective July 1, 2008, in the second sentence, substituted “department” for “Department of Administrative Services”; and, in the third sentence, substituted “department” for “Department of Administrative Services” near the beginning and added the language beginning “and shall approve or deny” at the end. See the editor’s note for applicability.

The 2010 amendment, effective July

1, 2010, throughout this Code section, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice and substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” three times.

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-84.2. Georgia State Indemnification Fund — Authorization for appropriation of moneys to the fund; moneys from other sources.

The General Assembly is authorized to appropriate funds to be placed in the Georgia State Indemnification Fund for the purpose of providing for indemnification with respect to the death or disability of any law enforcement officer, firefighter, or prison guard who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1973, the death or disability of any emergency medical technician who is killed or permanently disabled or has been killed or permanently disabled in the line of duty subsequent to January 1, 1977, the death or disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991, and the death or disability of any state highway employee who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1990, as well as defraying the expenses and costs incurred by the department and the commission in the administration of this part. In addition, the department is authorized to accept for deposit in the Georgia State Indemnification Fund any other funds from any other source. All funds appropriated to the Georgia State Indemnification Fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated and shall not lapse. (Ga. L. 1981, p. 477, § 2; Ga. L. 1987, p. 822, § 5; Ga. L. 1991, p. 1312, § 4; Ga. L. 1993, p. 1402, § 19; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 660, § 4(17); Ga. L. 2002, p. 1259, §§ 6, 11(17); Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, substituted “the department and the commission” for “the commission” near the end of the first sentence and substituted “department” for “Department of Administrative Services” in the second sentence. See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-84.3. Georgia State Indemnification Fund — Authority of department as to payments from fund.

The department is authorized, subject to the limitations contained in this part:

(1) To pay the appropriate indemnification to the persons eligible for indemnification under this part from the proceeds of the Georgia State Indemnification Fund;

(2) To make such payments as may be necessary to defray the expenses and costs incurred by the department and the commission in administering this part; and

(3) With the approval of the commission, to utilize the resources of the Georgia State Indemnification Fund to purchase insurance to provide for such indemnification. (Ga. L. 1981, p. 477, § 2; Ga. L. 1993, p. 1402, § 19; Ga. L. 1995, p. 877, § 2; Ga. L. 2000, p. 283, § 1; Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, in the introductory language, substituted “department” for “Department of Administrative Services”; in paragraph (1), deleted “or to the estate of such persons as provided in this part” following “under this part”; and, in paragraph (2), substituted “the department and the com-

mission” for “the commission”. See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-85. Payment of indemnification for death or disability; procedure for making of payments; appeal.

(a) Indemnification shall be paid under this article as follows:

(1) In the case of a partial permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, state highway employee, or prison guard, the eligible disabled person may elect payment of \$35,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(2) In the case of a total permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, state highway employee, or prison guard, the injured person may elect to receive a payment of \$75,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; or

(3) In the case of death or organic brain damage suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management specialist, state highway employee, or prison guard, payment shall be made to the surviving unremarried spouse or the dependents of the spouse or deceased person as shown in his or her most recent tax return or to the legal guardian of the organically brain damaged person. The surviving unremarried spouse, dependents, or the legal guardian may elect to receive payment in a lump sum payment of \$100,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(b) After the department, or the commission upon review of a denial by the department, determines that a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, prison guard, or state highway employee has suffered a total permanent disability, a partial permanent disability, organic brain damage, or death in the line of duty, the department shall be authorized to make the appropriate payments as provided in subsection (a) of this Code section.

(c) If the department denies a claim, any person seeking benefits pursuant to this part may appeal the department's decision to the commission. Any such appeal shall be filed with the commission within 60 days of receipt of the department's decision and shall identify the errors in the department's decision. Appeals shall be considered by the commission at the commission's semiannual meeting as provided in Code Section 45-9-84. (Ga. L. 1978, p. 1914, § 5; Ga. L. 1980, p. 700, § 4; Ga. L. 1987, p. 822, § 6; Ga. L. 1991, p. 1312, § 5; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 45; Ga. L. 1995, p. 877, § 3; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 660, § 4(18); Ga. L. 2002, p. 1259, §§ 7, 11(18); Ga. L. 2008, p. 470, § 1/SB 254; Ga. L. 2011, p. 593, § 1.1/HB 156.)

The 2008 amendment, effective July 1, 2008, rewrote this Code section. See editor's note for applicability.

The 2011 amendment, effective July 1, 2011, inserted "state highway employee" in paragraphs (a)(1) through (a)(3); deleted former paragraph (a)(2), relating to partial permanent disability suffered in the line of duty by a state employee; redesignated former paragraph (a)(3) as present paragraph (a)(2), and, in paragraph (a)(2), added "or" at the end; deleted former paragraph (a)(4), relating to total permanent disabled person electing to receive payment; redesignated for-

mer paragraph (a)(5) as present paragraph (a)(3), and, in paragraph (a)(3), deleted "; or" at the end; and deleted paragraph (a)(6), relating to payment upon death or organic brain damage suffered by a state highway employee in the line of duty. See editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

Ga. L. 2011, p. 593, § 2, not codified by the General Assembly, provides that: "(a)

It is the intent of the General Assembly that the revised indemnification amounts for state highway employees shall be applicable to all incidents involving state highway employees occurring on or after January 1, 2011.

“(b) The retroactive application of these changes with regard to state highway employees is based on the authority of Ga. Laws 2000, p. 2007, Section 1, adding Article III, Section VI, Paragraph VI(g) of the Georgia Constitution.”

45-9-86. Application for indemnification.

(a) An application for indemnification with respect to a claim for total permanent disability or partial permanent disability of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by that person unless the person is mentally incompetent, in which case the application may be made on such person's behalf by his or her legal guardian.

(b) An application for indemnification with respect to a claim for the death of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by or on behalf of the surviving unremarried spouse or dependents eligible under this part.

(c) An application for indemnification with respect to death, organic brain damage, total permanent disability, or partial permanent disability must be made within 24 months after the date of the incident giving rise to the death, organic brain damage, or disability. (Ga. L. 1978, p. 1914, § 7; Ga. L. 1980, p. 700, § 5; Ga. L. 1981, p. 477, § 4; Ga. L. 1985, p. 413, § 1; Ga. L. 1987, p. 822, § 7; Ga. L. 1991, p. 771, § 2; Ga. L. 1991, p. 1312, § 6; Ga. L. 1995, p. 877, §§ 4, 5; Ga. L. 2002, p. 660, § 4(19); Ga. L. 2002, p. 1259, §§ 8, 11(19); Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, in subsection (a), substituted “claim for total permanent disability or partial permanent disability” for “claim filed on or after July 1, 2002, for permanent disability” near the beginning, and substituted “his or her legal guardian” for “the parent, spouse, guardian, or other authorized individual” at the end; redesignated the former second sentence of subsection (a) as present subsection (b); deleted former subsections (b) through (d), relating to applications for indemnification relative to law enforcement officers, firefighters, prison guards, or emergency medical technicians killed or disabled in the line of duty; redesignated former subsection (e) as present subsection (c); in

subsection (c), substituted the present provisions for the former provisions, which read: “An application for indemnification with respect to the death or permanent disability of an emergency management rescue specialist who is killed or permanently disabled in the line of duty on or after January 1, 1991, must be made within 24 months after the date of the death or disability.”; and deleted former subsections (f) and (g), relating to applications for indemnification with respect to the death or disability of a member of the Georgia National Guard or state highway employee. See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly,

provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-86.1 and 45-9-86.2.

Repealed by Ga. L. 2008, p. 470, § 1, effective July 1, 2008.

Editor's notes. — These Code sections, concerning the time limit on applications for indemnification relative to death of part-time law enforcement officer killed in line of duty and the time limitation on applications for indemnification relative

to law enforcement officers, firefighters, and prison guards permanently disabled due to organic brain damage, were based on Ga. L. 1981, p. 477, § 5; Ga. L. 1983, p. 651, § 2; Ga. L. 2002, p. 660, § 4(20); Ga. L. 2002, p. 1259, § 11(20).

45-9-87. Indemnification not taxable.

It is the intent of the General Assembly that indemnification paid pursuant to this part shall not be taxable within this state for any purpose. (Ga. L. 1980, p. 1343, § 1; Ga. L. 2000, p. 283, § 1; Code 1981, § 45-9-87, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-88 as present Code Section 45-9-87. See the editor's note for applicability.

Editor's notes. — This Code section formerly pertained to the state's subrogation to cause of action for death or disability upon payment of indemnifi-

cation. The former Code section was based on Ga. L. 1978, p. 1914, § 9; Ga. L. 1980, p. 700, § 6.

Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-88. Indemnification not to be awarded where penal violation, suicide, intentionally self-inflicted injuries, natural causes, or performance of certain routine duties caused or contributed to death or disability.

(a) No indemnification shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the death or disability of the officer.

(b) Notwithstanding any other provision of this article, no payment shall be authorized if death, organic brain damage, total permanent disability, or partial permanent disability occurs from suicide, intentionally self-inflicted injuries, natural causes, or the performance of routine duties which would not be considered strenuous or dangerous by a reasonable person; provided, however, that this subsection shall not preclude the department or the commission from considering competent, independent medical evidence as to whether a heart attack that occurs shortly after fighting a fire was caused by the strain of fighting the fire. (Ga. L. 1978, p. 1914, § 8; Code 1981, § 45-9-88, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-89 as present Code Section 45-9-88, designated the existing provisions as subsection (a), and added subsection (b). See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-89. Annual report to General Assembly.

The commission shall annually file a report of its activities with the General Assembly, which report shall include the amount of funds paid under the program of indemnification. It shall also include a copy of each order providing for payment or a summary of each such order giving all pertinent details. (Ga. L. 1978, p. 1914, § 10; Code 1981, § 45-9-89, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-90 as present Code Section 45-9-89. See the editor's note for applicability.

§ 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

Editor's notes. — Ga. L. 2008, p. 470,

45-9-90. Giving of false information or testimony.

(a) Any person who shall knowingly give false information or false testimony causing or intended to cause the payment of indemnification which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony. (Ga. L. 1978, p. 1914, § 11; Ga. L. 2000, p. 283, § 1; Code 1981, § 45-9-90, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-91 as present Code Section 45-9-90. See the editor's note for applicability.

§ 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

Editor's notes. — Ga. L. 2008, p. 470,

45-9-91. Redesignated.

Editor's notes. — Ga. L. 2008, p. 470, § 1, effective July 1, 2008, redesignated

former Code Section 45-9-91 as present Code Section 45-9-90.

PART 2

TEMPORARY DISABILITY COMPENSATION PROGRAM

45-9-100. Purpose.

The purpose of this part is to implement the constitutional amendment ratified November 7, 2000, authorizing the General Assembly to provide a program of compensation for law enforcement officers who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty and caused by a willful act of violence and for firefighters who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty while fighting a fire, which program shall entitle an injured law enforcement officer or firefighter to receive monthly compensation from the state in an amount equal to such person's regular compensation for the period of time that the law enforcement officer or firefighter is physically unable to perform the duties of his or her employment, not exceeding 12 months, and to provide certain exceptions and limitations with respect to such program of compensation. (Code 1981, § 45-9-101, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(21); Ga. L. 2002, p. 1259, § 11(21); Code 1981, § 45-9-100, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-101 as present Code Section 45-9-100. See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-101. Definitions.

As used in this part, the term:

(1) "Commission" means the Georgia State Indemnification Commission created in Code Section 45-9-83.

(2) "Department" means the Department of Administrative Services.

(3) "Firefighter" means:

(A) Any person who is employed as a professional firefighter on a full-time or part-time basis by any municipal, county, or state government fire department certified in writing by the Georgia Firefighter Standards and Training Council pursuant to Code Section 25-3-22 employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and

control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property;

(B) Any individual serving as an officially recognized or designated member of a legally organized volunteer fire department certified in writing by the Georgia Firefighter Standards and Training Council pursuant to Code Section 25-3-22 who performs any acts or actions while on duty and when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property; or

(C) Any employee at the Georgia Forestry Commission whose job duties include fire mitigation.

(4) "Full-time" means an employee who regularly works 30 hours or more each week.

(5) "In the line of duty" means:

(A) With respect to a volunteer firefighter, while on duty and performing duties during any fire or other emergency or performing duties intended to protect life and property; or

(B) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement or fire service agency which employs such officer or firefighter, while off duty and responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer's or firefighter's bodily injury, but not permanent disability, shall not be considered in the line of duty if the officer or firefighter is entitled to workers' compensation benefits from the private employer or the private employer's insurer.

(6) "Injured in the line of duty" means an injury which arises out of or in the course of employment in the line of duty; or, with respect to a firefighter of a legally organized volunteer fire department, such term means an injury while on duty and when responding to a fire or emergency with the volunteer fire department during any fire or other emergency or while performing duties intended to protect life and property. Going to or from work shall not be considered in the line of duty; and going to a legally organized volunteer fire department to begin a service of duty or traveling from such a fire department after duties have been completed or traveling from the scene of a fire, emergency, or other location where duties were being performed and have been completed shall not be considered in the line of duty.

(7) “Law enforcement officer” means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the employees designated by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision. Such term also includes members of the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3, who have been called into active state service by the Governor.

(8) “Volunteer firefighter” means a person who is appointed and regularly enrolled as a volunteer with a legally organized fire department; who, as a volunteer firefighter, has and primarily performs the principal responsibility of preventing or suppressing fires; and who satisfies the requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23. (Code 1981, § 45-9-102, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 2; Ga. L. 2002, p. 1259, § 9; Ga. L. 2003, p. 772, § 1; Ga. L. 2005, p. 334, § 27-2/HB 501; Code 1981, § 45-9-101, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254; Ga. L. 2009, p. 8, § 45/SB 46.)

The 2003 amendment, effective July 1, 2003, in paragraph (2), substituted a colon for “any” at the end of the introductory language, designated the remaining introductory provisions as subparagraph (2)(A), in subparagraph (2)(A), inserted “Any” at the beginning, inserted “certified in writing by the Georgia Firefighter Standards and Training Council pursuant to Code Section 25-3-22”, and added “; or” at the end, and added subparagraph (2)(B); in paragraph (5), added “; or, with respect to a firefighter of a legally organized volunteer fire department, such term means an injury while on duty and when responding to a fire or emergency with the volunteer fire department during any fire or other emergency or while performing duties intended to protect life and property” at the end of the first sentence and added “; and going to a legally organized volunteer fire department to begin a service of duty or traveling from such a

fire department after duties have been completed or traveling from the scene of a fire, emergency, or other location where duties were being performed and have been completed shall not be considered in the line of duty” at the end of the last sentence.

The 2005 amendment, effective July 1, 2005, deleted “and employees designated and delegated law enforcement powers by the commissioner of motor vehicle safety, which personnel have the duty to enforce the laws relating to motor carriers and the transportation of hazardous materials” at the end of paragraph (6).

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-102 as present Code Section 45-9-101; added paragraph (2); redesignated former paragraphs (2) through (6) as present paragraphs (3) through (7), respectively; in paragraph (3), deleted “or ‘fireman’” preceding “means” in the intro-

ductory language, in subparagraph (3)(A), inserted “or part-time” near the beginning, and deleted “or” from the end, in subparagraph (3)(B), substituted “; or” for a period at the end, and added subparagraph (3)(C); in subparagraph (5)(A), inserted “volunteer” near the beginning, and substituted “if the officer or firefighter is entitled to worker’s compensation benefits from the private employer or the private employer’s insurer” for “unless the officer or firefighter has left the scope of his or her employment for the private employer for the direct purpose of enforcing or attempting to enforce fire service, the criminal or traffic laws, preserving or attempting to preserve public order, protecting or attempting to protect life or property, preventing or attempting to prevent a crime, detecting or attempting to detect crime, or investigating or attempting to investigate crime. The determination that a law enforcement officer or firefighter was disabled in the line of duty

and is entitled to compensation pursuant to this part shall not be considered in the determination of the entitlement of such officer to workers’ compensation, disability, health, or other benefits from such officer’s or firefighter’s public or private employer” at the end; in paragraph (7), in the first sentence, inserted “or part-time” near the beginning, in the second sentence, deleted “prison guards as defined under Code Section 45-9-81 and” following “also includes” near the beginning, and added the last sentence; and added paragraph (8). See the editor’s note for applicability.

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (5)(B).

Editor’s notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-102. Payment of compensation; 12 month limitation; benefits subordinate to workers’ compensation benefits; appeal of decision.

(a) Any law enforcement officer who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty and caused by a willful act of violence committed by a person other than a fellow employee shall be entitled to receive compensation as provided in this Code section. Any firefighter who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty while fighting a fire shall be entitled to receive compensation as provided in this Code section. The compensation shall be paid to eligible applicants by the commission from funds appropriated to the commission for such purpose.

(b) Except as otherwise provided in this part, any law enforcement officer or firefighter injured in the line of duty as provided in subsection (a) of this Code section shall receive monthly compensation from the department in an amount equal to such person’s regular compensation for the period of time that the law enforcement officer or firefighter is physically unable to perform the duties of his or her employment; provided, however, that such benefits provided pursuant to this Code section for injuries resulting from a single incident shall not be granted for more than a total of 12 months. For purposes of this subsection, the regular compensation of a volunteer firefighter covered under subpara-

graph (2)(B) of Code Section 45-9-101 shall be deemed to be the Georgia average weekly earnings of production workers in manufacturing industries for the immediately preceding calendar year as published by the Georgia Department of Labor. A law enforcement officer or firefighter shall be required to submit to the department satisfactory evidence of such disability. A volunteer firefighter shall not be considered disabled once he or she is able to perform the duties of his or her regular employment or equivalent thereof.

(c) Benefits made available under this Code section shall be subordinate to any workers' compensation benefits, disability and other compensation benefits from the person's employer which the law enforcement officer or firefighter is awarded and shall be limited to the difference between the amount of workers' compensation benefits and other compensation benefits actually paid and the amount of the law enforcement officer's or firefighter's regular compensation; provided, however, that benefits shall never exceed the person's regular compensation minus the maximum weekly workers' compensation benefit level for that person whether or not workers' compensation is available. For the purposes of this subsection, the regular compensation of a firefighter covered under subparagraph (2)(B) of Code Section 45-9-102 shall be deemed to be the Georgia average weekly earnings of production workers in manufacturing industries for the immediately preceding calendar year as published by the Georgia Department of Labor.

(d) A law enforcement officer or firefighter who collects benefits pursuant to this Code section shall not be entitled to any benefits under Code Section 45-7-9.

(e) A law enforcement officer or firefighter who is disabled and who receives indemnification under Part 1 of this article as a result of an incident shall not be entitled to any compensation under this Code section for the disability resulting from the same incident. A law enforcement officer or firefighter who initially receives benefits under this Code section but who is determined subsequently to be entitled to benefits under Part 1 of this article with respect to the same incident or whose beneficiary is determined subsequently to be entitled to benefits under Part 1 of this article shall be entitled only to the amount equal to the benefits to which the person would be entitled under Part 1 reduced by the total amount of benefits received under this Code section.

(f) After the department, or the commission upon review of a denial by the department, determines that a law enforcement officer has been temporarily disabled due to a willful act of violence or that a firefighter has been temporarily disabled while fighting a fire and is entitled to indemnification under this part, the department shall be authorized to make the appropriate payments to the temporarily disabled law enforcement officer or firefighter.

(g) If the department denies a claim, any person seeking benefits pursuant to this part may appeal the department's decision to the commission. Any such appeal shall be filed with the commission within 60 days of receipt of the department's decision and shall identify the errors in the department's decision. Appeals shall be considered by the commission at the commission's semiannual meeting as provided in Code Section 45-9-84. (Code 1981, § 45-9-103, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 3; Ga. L. 2002, p. 1259, § 10; Ga. L. 2003, p. 772, § 2; Code 1981, § 45-9-102, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2003 amendment, effective July 1, 2003, in subsection (b), added the second sentence and added the last sentence; and, in subsection (c), added the proviso at the end of the first sentence and added the second sentence.

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-103 as present Code Section 45-9-102; in subsection (b), in the first sentence, substituted "department" for "commission", in the second sentence, in-

serted "volunteer" near the beginning, and substituted "Code Section 45-9-101" for "Code Section 45-9-102" near the middle, and, in the third sentence, substituted "department" for "commission" near the middle; and added subsection (f). See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-103. Submission of application.

An application for compensation with respect to a claim filed on or after July 1, 2001, for the temporary disability of a law enforcement officer or firefighter shall be submitted by that person within 60 days from the date of the incident resulting in disability. (Code 1981, § 45-9-104, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(22); Ga. L. 2002, p. 1259, § 11(22); Ga. L. 2005, p. 723, § 1/HB 240; Code 1981, § 45-9-103, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2005 amendment, effective May 3, 2005, in subsection (a), inserted "temporary" near the middle and substituted "60 days" for "30 days" near the end.

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-104 as present Code Section 45-9-103; deleted the former subsection (a) designation; and deleted former subsection (b), which read: "(b) The commission is authorized to promulgate rules and regulations relative to the program of compensation provided in this part. Such rules and regulations may provide for initial investigation of claims and the issuance of subpoenas to facilitate such in-

vestigation, special masters, hearings, procedures for applications for compensation, and all other matters so as to enable the commission to carry out its duties fairly, properly, and equitably. The chairperson of the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties." See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-104. Compensation not to be awarded where penal violation, intentionally self-inflicted injuries, natural causes, or performance of certain routine duties caused or contributed to disability.

(a) No compensation shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the disability of the law enforcement officer or firefighter.

(b) Notwithstanding any other provision of this article, no payment shall be authorized if disability occurs from intentionally self-inflicted injuries or natural causes or while performing routine duties which would not be strenuous or dangerous if performed by persons of average physical abilities. (Code 1981, § 45-9-105, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(23); Ga. L. 2002, p. 1259, § 11(23); Code 1981, § 45-9-104, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-105 as present Code Section 45-9-104; designated the existing provisions as subsection (a); and added subsection (b). See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-105. Giving of false information or testimony; penalty.

(a) Any person who shall knowingly give false information or false testimony causing or intending to cause the payment of compensation which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony. (Code 1981, § 45-9-106, enacted by Ga. L. 2000, p. 283, § 2; Code 1981, § 45-9-105, as redesignated by Ga. L. 2008, p. 470, § 1/SB 254.)

The 2008 amendment, effective July 1, 2008, redesignated former Code Section 45-9-106 as present Code Section 45-9-105. See the editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 470, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all incidents occurring on or after July 1, 2008.

45-9-106. Redesignated.

Editor's notes. — Ga. L. 2008, p. 470, § 1, effective July 1, 2008, redesignated

former Code Section 45-9-106 as present Code Section 45-9-105.

ARTICLE 6

CONSOLIDATION OF UNEMPLOYMENT COMPENSATION
CLAIM MATTERS UNDER COMMISSIONER OF
ADMINISTRATIVE SERVICES**45-9-110. Authorization for consolidation; billing procedure; reserve fund; investment of funds; contracting for services; provision of unemployment compensation benefits to certain county employees.**

(a) The commissioner of administrative services shall have the authority to consolidate the processing of and response to unemployment compensation claims being performed on July 1, 1985, by each individual agency, department, board, bureau, commission, and authority of the state along with the payment to the Department of Labor of this state of all moneys due and owing as a result of paid unemployment compensation claims and shall bill each department, agency, board, bureau, commission, or authority of the state for claims paid and for the reasonable cost of administering the program.

(b) The commissioner may retain all moneys paid to the Department of Administrative Services in response to such billings, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the purpose of making payments to the Department of Labor of this state and defraying the expenses necessary to administer the program. The commissioner shall invest any such moneys in the same manner as other moneys in his possession.

(c) The commissioner is authorized, in his discretion, to contract for any or all of the services necessary to carry out the functions enumerated in this article.

(d) The commissioner of administrative services shall have the authority to provide unemployment compensation benefits insurance to all of the county departments of health, county departments of family and children services, and community service boards. The commissioner of public health shall establish a procedure to provide the Department of Administrative Services all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from county departments of health and remit the premium to the Department of Administrative Services. The commissioner of human services shall establish a procedure to provide the Department of Administrative Services all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from county

departments of family and children services and remit the premium to the Department of Administrative Services. The commissioner of behavioral health and developmental disabilities shall establish a procedure to provide the Department of Administrative Services all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from community service boards and remit the premium to the Department of Administrative Services. All of the county departments of health, county departments of family and children services, and community service boards shall participate in such unemployment compensation benefit insurance program. (Code 1981, § 45-9-110, enacted by Ga. L. 1985, p. 973, § 1; Ga. L. 1994, p. 1717, § 6; Ga. L. 1999, p. 81, § 45; Ga. L. 2009, p. 453, § 1-50/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2009 amendment, effective July 1, 2009, in subsection (d), in the second sentence, substituted “commissioner of community health” for “commissioner of human resources” near the beginning, and substituted “county departments of health” for “such boards and departments” near the end; and added the third and fourth sentences.

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” near the beginning of the second sentence of subsection (d).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 10

CODES OF ETHICS AND CONFLICTS OF INTEREST

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45-10-24.1.	Exemption for transactions by family owned business where university system employee has interest; requirements.	45-10-27.	Construction of part with provisions, rules, and regulations of Chapter 20 of this title.
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45-10-26.	Public officials and employees to file yearly disclosure statements concerning business	45-10-29.	Public officials prohibited from granting themselves licenses by waiving certain requirements; requirements to be satisfied prior to renewal of

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licenses; penalties for violations.

PART 2

CONTRACTS OF OFFICERS OF STATE
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45-10-40. Contracting with state institutions not allowed; exceptions.

45-10-41. Penalty for profiting from contracts with state institutions generally; discharge from office.

PART 5

FAMILY MEMBERS OF PUBLIC EMPLOYEES

45-10-80. Public officers prohibited from advancing, employing, or advocating the employment of family members.

PART 6

LEGISLATIVE ETHICS

45-10-90. Definitions.

45-10-91. Method of addressing improper conduct.

45-10-92. Abuse of power and improper use of state employees by General Assembly members.

ARTICLE 1

CODES OF ETHICS

45-10-1. Establishment and text of code of ethics for government service generally.

Law reviews. — For article, “Georgia’s New Ethics Laws: A Summary of the Changes Relevant to Lobbyists and Legislators,” see 11 Ga. St. B.J. 22 (No. 4, 2005).

JUDICIAL DECISIONS

Removal from office. — A city commissioner’s removal from office, based on acts committed prior to taking office, was erroneous because: (1) removal was not authorized by the city’s charter; (2) the commissioner’s conduct of maintaining innocence until the entry of a guilty plea after taking office was not an official act or one done under the color of the office; (3) the acts committed did not prevent the commissioner from performing the duties of that post; and (4) the commissioner was not guilty of evading the law after becoming a member of the commission. *Ciccio v. City of Hephzibah*, 289 Ga. App. 134, 656

S.E.2d 245 (2008), cert. denied, 2008 Ga. LEXIS 474 (Ga. 2008).

No duty on board to put citizen on agenda. — A citizen was not entitled to a writ of mandamus directing a school board to place the citizen on the board’s agenda because setting the agenda was a discretionary act that was not subject to mandamus and none of the statutes cited by the citizen, O.C.G.A. §§ 20-2-1160(a), 45-10-1 and 50-6-6(b), imposed a duty on the board to place the citizen on the board’s agenda. *James v. Montgomery County Bd. of Educ.*, 283 Ga. 517, 661 S.E.2d 535 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Representation by lawyer/legislator. — Lawyer/legislator may represent the legal interests of a Georgia company on matters in other states, including political consulting and the drafting of legislation. However, even if there may not

be a per se conflict of interest, a lawyer/legislator must always vigilantly guard against such conflicts developing depending upon the facts and circumstances of each situation, especially when matters arise involving the lawyer/legislator’s own

actions in the consideration of legislation within the General Assembly. 2009 Op. Att’y Gen. No. U2009-3.

45-10-3. Code of ethics for members of boards, commissions, and authorities — Establishment and text.

Law reviews. — For article, “The Status of Administrative Agencies under the Georgia Constitution,” 40 Ga. L. Rev. 1109 (2006).

JUDICIAL DECISIONS

Laches. — Appeal by county board of education members of a judgment denying the members’ request to reverse the governor’s order removing the members from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3 was not dismissed due to the doctrine of laches; the members were required by O.C.G.A. § 45-10-4 to proceed under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and no delay warranted the imposition of the doctrine of laches; the governor’s order was signed on August 6, 2010, and the members filed the members’ petition for judicial review on August 12, 2010. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

Appeal dismissed as moot. — County board of education member’s appeal of a judgment denying a request to reverse the

governor’s order removing the member from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3 was dismissed because the term to which the member had originally been elected expired. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

Removal of county board of education members. — Superior court erred in denying county board of education members’ request to reverse the governor’s order removing the members from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3; O.C.G.A. § 45-10-3 does not embrace entities created by the Constitution of Georgia, and county school boards are creations of Ga. Const. 1983, Art. VIII, Sec. V, Para. II. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Necessity to avoid appearance of impropriety. — Even though O.C.G.A. § 45-10-25 potentially could authorize an attorney member of the State Ethics Commission to transact business with the commission, Ga. Const. Art. I, Sec. II, Par. I, and O.C.G.A. § 45-10-3 counsel against such a transaction as it could give rise to an appearance of impropriety if not an actual conflict of interest. 2002 Op. Att’y Gen. No. 2002-4.

Commission member cannot en-

gage in business with commission. — An attorney member of the State Ethics Commission is prohibited from engaging in any business transaction with the commission, and other members of his or her law firm would be prohibited from engaging in any business transaction with the commission if the member or a member of his or her family owns a substantial interest as defined by statute. 2002 Op. Att’y Gen. No. 2002-4.

45-10-4. Code of ethics for members of boards, commissions, and authorities — Hearing on violation charge; notice of hearing; removal of member from office; filling vacancies; judicial review.

JUDICIAL DECISIONS

Laches. — Appeal by county board of education members of a judgment denying the members' request to reverse the governor's order removing the members from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3 was not dismissed due to the doctrine of laches; the members were required by O.C.G.A. § 45-10-4 to proceed under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and no delay warranted the imposition of the doctrine of laches; the governor's order was signed on August 6, 2010, and the members filed the members' petition for judicial review on August 12, 2010. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

Appeal dismissed as moot. — County board of education member's appeal of a judgment denying a request to reverse the

governor's order removing the member from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3 was dismissed because the term to which the member had originally been elected expired. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

Removal of county board of education members. — Superior court erred in denying county board of education members' request to reverse the governor's order removing the members from office under O.C.G.A. § 45-10-4 for violating O.C.G.A. § 45-10-3; O.C.G.A. § 45-10-3 does not embrace entities created by the Constitution of Georgia, and county school boards are creations of Ga. Const. 1983, Art. VIII, Sec. V, Para. II. *Roberts v. Deal*, 290 Ga. 705, 723 S.E.2d 901 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Lobbying. — So long as a member of the State Ethics Commission who is an attorney refrains from lobbying, lawyers and others affiliated with the member's law firm may, depending upon the particular facts and circumstances of each case, engage in lobbying without affecting the member's service. 2002 Op. Att'y Gen. No. 2002-4.

There is no general prohibition against the practice of administrative law and the representation of clients before state agencies by an attorney member of the

State Ethics Commission and other members of his or her law firm. 2002 Op. Att'y Gen. No. 2002-4.

Representation of local governments by members of commission. — An attorney member of the State Ethics Commission and other members of his or her law firm may generally represent local governments so long as the representation does not involve taking an action adverse to the commission itself. 2002 Op. Att'y Gen. No. 2002-4.

ARTICLE 2
CONFLICTS OF INTEREST

PART 1
GENERAL PROVISIONS

45-10-20. Definitions.

As used in this part, the term:

(1) "Agency" means any agency, authority, department, board, bureau, commission, committee, office, or instrumentality of the State of Georgia but shall not mean a political subdivision of the State of Georgia.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.

(3) "Employee" means any person who, pursuant to a written or oral contract, is employed by an agency.

(4) "Family" means spouse and dependents.

(5) "Full-time" means 30 hours of work for the state per week for more than 26 weeks per calendar year.

(6) "Limited powers" means those powers other than state-wide powers.

(7) "Part-time" means any amount of work other than full-time work.

(8) "Person" means any person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity.

(9) "Public official" means any person elected to a state office and means any person appointed to a state office where in the conduct of such office the person so appointed has administrative and discretionary authority to receive and expend public funds and to perform certain functions concerning the public which are assigned to him or her by law.

(10) "State-wide powers" means those powers exercised by public officials which affect and influence all of state government. Public officials who exercise such powers include but are not limited to the Governor, the Lieutenant Governor, members of the General Assembly, Justices of the Supreme Court, Judges of the Court of Appeals, the Secretary of State, the Attorney General, the state auditor, the

state accounting officer, the commissioner of administrative services, members of the State Personnel Board, the director of the Office of Planning and Budget, judges of the superior courts, and district attorneys.

(11) "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(12) "Transact business" or "transact any business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative. (Code 1981, § 45-10-20, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 1337, § 1; Ga. L. 2005, p. 694, § 36/HB 293; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-71/HB 642.)

The 2005 amendment, effective July 1, 2005, inserted "the state accounting officer," following "the state auditor," in paragraph (10).

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the middle of paragraph (10).

The 2012 amendment, effective July 1, 2012, inserted "or her" near the end of paragraph (9); and deleted "the commissioner of the State Personnel Administration and" following "administrative services," in the second sentence of paragraph (10).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-10-22. Full-time public officials with state-wide powers prohibited from transacting business with all state agencies; public officials or employees with limited powers prohibited from transacting business with own state agency.

OPINIONS OF THE ATTORNEY GENERAL

Commission member transacting business with commission. — It would be an impermissible conflict of interest for an attorney member of the State Ethics Commission, any business on whose behalf a commissioner is acting, or any business in which the member or a member of his or her family owns a substantial interest, to transact business with a state

agency other than the commission if the work is directly or indirectly for the benefit of the commission. 2002 Op. Att'y Gen. No. 2002-4.

Member of Board of Regents of University System. — Business transactions between any member of the Board of Regents and the University System of Georgia are prohibited absent a statutory

exception permitting the transaction, and then only if there is no common law conflict creating a breach of the member's

constitutional fiduciary duty. 2004 Op. Att'y Gen. No. 2004-7.

45-10-24.1. Exemption for transactions by family owned business where university system employee has interest; requirements.

Subsection (a) of Code Section 45-10-23 and paragraph (2) of subsection (a) of Code Section 45-10-24 shall not apply to a transaction with a unit of the University System of Georgia by a family owned business in which an employee of the university system or a member of the employee's family has an ownership interest where all of the following apply:

(1) The employee or one or more members of the employee's family or both have an ownership interest in a family owned business, but the employee is not actively engaged in the day-to-day management of the business;

(2) The employee is employed by a department of the unit of the university system in a position below that of department head; and

(3) The transaction is:

(A) With a unit of the university system different than the unit employing the employee; or

(B) With a department of the employing unit of the university system different than the department employing the employee.
(Code 1981, § 45-10-24.1, enacted by Ga. L. 2003, p. 516, § 1.)

Effective date. — This Code section became effective June 2, 2003.

45-10-25. Exceptions to prohibitions on transactions with state agencies.

OPINIONS OF THE ATTORNEY GENERAL

Necessity to avoid appearance of impropriety. — Even though O.C.G.A. § 45-10-25 potentially could authorize an attorney member of the State Ethics Commission to transact business with the commission, Ga. Const. 1983, Art. I, Sec.

II, Para. I, and O.C.G.A. § 45-10-3 counsel against such a transaction as it could give rise to an appearance of impropriety if not an actual conflict of interest. 2002 Op. Att'y Gen. No. 2002-4.

45-10-26. Public officials and employees to file yearly disclosure statements concerning business transactions with state; statements to be public records.

(a) Except as provided in subsection (b) of this Code section, any public official or employee, whether for himself, herself, or on behalf of any business, or any business in which such public official or employee or any member of his or her family has a substantial interest who transacts business with the state or any agency thereof shall disclose such transactions. Such disclosure shall be submitted prior to January 31 each year to the Georgia Government Transparency and Campaign Finance Commission on such forms as it shall prescribe and shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

(b) The requirement to disclose certain transactions as provided in subsection (a) of this Code section shall not apply to any transaction when the amount of a single transaction does not exceed \$250.00 and when the aggregate of all transactions does not exceed \$9,000.00 per calendar year.

(c) Any person who fails to file a disclosure statement as required in subsection (a) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-26, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 1196, § 3; Ga. L. 2010, p. 1173, § 28/SB 17.)

The 2010 amendment, effective January 10, 2011, in subsection (a), in the first sentence, inserted “, herself”, and inserted “or her”, and substituted “Georgia Government Transparency and Campaign Finance Commission on such forms as it” for “Secretary of State on such forms as he” in the second sentence. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 1173,

§ 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

45-10-27. Construction of part with provisions, rules, and regulations of Chapter 20 of this title.

This part shall in no way supersede any provision of Chapter 20 of this title or any rule or regulation promulgated pursuant thereto. (Code 1981, § 45-10-27, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-72/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in this Code section.

The 2012 amendment, effective July 1, 2012, substituted the present provisions of this Code section for the former provisions, which read: “This part shall in no way amend or repeal any statute or regulation promulgated pursuant thereto pertaining to the State Personnel Administration.”

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-10-28. Penalties for violation of part; civil actions by Attorney General to collect penalties; violations by public official, agency head, or employee.

(a)(1) Any appointed public official or employee who violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) Removal from office or employment;

(B) A civil fine not to exceed \$10,000.00; and

(C) Restitution to the state of any pecuniary benefit received as a result of such violation.

(2) Any elected public official who violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) A civil fine not to exceed \$10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(3) Any business which violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) A civil fine not to exceed \$10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(b) The penalties provided for in subsection (a) of this Code section may be imposed in any civil action brought for that purpose, and such actions shall be brought by the Attorney General.

(c) As used in this subsection, the term “agency head” shall have the same meaning as set forth in Code Section 50-36-1. Any public official, agency head, or employee who violates Code Section 13-10-91 or 50-36-1 shall be subject to:

(1) A civil fine not to exceed \$10,000.00;

(2) Restitution to the state or local government, whichever is applicable, of any pecuniary benefit received as a result of such violation; and

(3) Where such violation is committed knowingly and intentionally, removal from office or employment. (Code 1981, § 45-10-28, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 2011, p. 449, § 10/HB 413; Ga. L. 2011, p. 794, § 15/HB 87; Ga. L. 2012, p. 775, § 45/HB 942.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, in paragraphs (a)(1) through (a)(3), deleted “or” following “45-10-24,” and inserted “, or 45-10-29”. The second 2011 amendment, effective July 1, 2011, added subsection (c). See editor’s note for applicability.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, redesignated former paragraphs (c)(A) through (c)(C) as present paragraphs (c)(1) through (c)(3), respectively.

Editor’s notes. — Ga. L. 2011, p. 794, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Illegal Immigration Reform and Enforcement Act of 2011.’”

Ga. L. 2011, p. 794, § 21, not codified by

the General Assembly, provides for severability, and provides in part, that: “(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

“(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights.”

Ga. L. 2011, p. 794, § 22, not codified by the General Assembly, provides, in part, that the amendment to this Code section by that Act shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article, “State Government: Illegal Immigration Reform and Enforcement Act of 2011,” see 28 Ga. St. U. L. Rev. 51 (2011).

45-10-29. Public officials prohibited from granting themselves licenses by waiving certain requirements; requirements to be satisfied prior to renewal of licenses; penalties for violations.

(a) Notwithstanding any law, rule, or regulation to the contrary, a public official shall not be authorized to waive any legal, educational, or testing requirement for himself or herself relative to the issuance of any license to himself, herself, or to his or her business.

(b) Any license that has been issued by a public official by waiving any legal, educational, or testing requirement for himself or herself relative to the issuance of any license to himself, herself, or to his or her business shall not be renewed until and unless the license holder has satisfied all of the requirements for securing a renewal license as well as any requirement that had been waived for the issuance of the original license.

(c) Any person who knowingly violates subsection (a) or (b) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-29, enacted by Ga. L. 2011, p. 449, § 11/HB 413.)

Effective date. — This Code section became effective July 1, 2011.

PART 2

CONTRACTS OF OFFICERS OF STATE INSTITUTIONS WITH STATE INSTITUTIONS

45-10-40. Contracting with state institutions not allowed; exceptions.

No member of the Board of Regents of the University System of Georgia or of the Board of Human Services, no trustee or other officer of any institution which is wholly or in part supported by state funds, and no partnership of which such person is a member shall make any contract with the governing board or trustees of such institution or any officer of such institution for the sale and purchase of merchandise or supplies for such institution whereby profit shall accrue to such board member or trustee or such partnership of which such person is a member. Such trustee or officer of such institution shall not make any profit or receive any money for the sale, handling, or disposal of any crop or crops or property of such institution. Such member, trustee, or other officer of such institution shall not make or be interested in any contract for supplies or merchandise for such institution when such contract or the making of the same is wholly or in part made or influenced by the action of the board governing such institution or the trustees thereof or is controlled by any officer of such institution; and any and all such contracts are declared to be illegal and void, provided that any such contracts as are described in this Code section may be made with a corporation of which any such board member or trustee is a stockholder if such member or trustee does not vote on or participate in the making of such contract. No board member or trustee of such institution shall be prohibited from making contracts for furnishing supplies to the students or faculty of such institution for their individual use. (Ga. L. 1918, p. 265, § 1; Code 1933, § 89-904; Ga. L. 1990, p. 8, § 45; Ga. L. 2009, p. 453, § 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in the first sentence of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Transactions between members of Board of Regents and University System prohibited. — Business transactions between any member of the Board of

Regents and the University System of Georgia are prohibited absent a statutory exception permitting the transaction, and then only if there is no common law conflict creating a breach of the member's constitutional fiduciary duty. 2004 Op. Att'y Gen. No. 2004-7.

45-10-41. Penalty for profiting from contracts with state institutions generally; discharge from office.

Any member of the Board of Regents of the University System of Georgia or of the Board of Human Services or any trustee or other officer of any institution supported wholly or in part by state funds who violates Code Section 45-10-40 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as prescribed in Code Section 17-10-3. If any member of the Board of Regents of the University System of Georgia or of the Board of Human Services is found guilty of violating Code Section 45-10-40, his office shall become vacant; and it is the duty of the Governor, where the power to fill the vacancy is lodged in the Governor, to appoint some other person to fill the vacancy. If any trustee or other officer of such institution is found guilty of violating Code Section 45-10-40, he shall be discharged from his office in such institution and shall not be eligible to be reelected or reappointed to such office; and the vacancy shall be filled by the board or the authority which, under the law, has the right to fill such vacancy. (Ga. L. 1918, p. 266, § 2; Code 1933, § 89-9915; Ga. L. 1990, p. 8, § 45; Ga. L. 2009, p. 453, § 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Board of Human Services" for "Board of Human Resources" in the first and second sentences of this Code section.

PART 4

HOLDING OF ADDITIONAL OFFICES BY NONELECTIVE STATE OFFICERS OR EMPLOYEES

45-10-70. Holding office in political subdivision, political party, or political organization by nonelective state officers or employees.

OPINIONS OF THE ATTORNEY GENERAL

Service as mayor and assistant district attorney. — Because there exists a conflict between the performance of the official duties as an assistant district attorney in the Northern Judicial Circuit of Georgia and those of the mayor of Comer, Georgia, offering for or holding that elective office while employed as an assistant district attorney in the Northern Judicial Circuit of Georgia would be prohibited by

O.C.G.A. § 45-10-70. 2002 Op. Att’y Gen.
No. U2002-7.

PART 5

FAMILY MEMBERS OF PUBLIC EMPLOYEES

Effective date. — This part became effective January 9, 2006.

Editor’s notes. — Ga. L. 2005, p. 859, § 28, not codified by the General Assem-

bly, provides that the provisions of that Act do not apply to any violation occurring prior to January 9, 2006.

45-10-80. Public officers prohibited from advancing, employing, or advocating the employment of family members.

(a) A public officer, as defined in subparagraphs (A) through (E) of paragraph (22) of Code Section 21-5-3, is prohibited from advocating for or causing the advancement, appointment, employment, promotion, or transfer of a member of his or her family, as such term is defined in Code Section 21-5-3, to an office or position to become a public employee, as defined in paragraph (3) of subsection (a) of Code Section 45-1-4, that pays an annual salary of \$10,000.00 or more or its equivalent.

(b) Any person advanced, appointed, employed, promoted, or transferred in violation of this Code section shall not be entitled to any payment, salary, or benefits received for any position so illegally obtained; and any person who receives payment, salary, or benefits for a position obtained in violation of this Code section shall be required to reimburse the state for all amounts so received. (Code 1981, § 45-10-80, enacted by Ga. L. 2005, p. 859, § 25/HB 48; Ga. L. 2006, p. 72, § 45/SB 465.)

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, inserted “of subsection (a)” near the end of subsection (a).

Law reviews. — For article on 2005 enactment of this section, see 22 Ga. St. U. L. Rev. 119 (2005).

PART 6

LEGISLATIVE ETHICS

Effective date. — This part became effective January 10, 2011.

Editor’s notes. — The former part consisted of Code Sections 45-10-90 through 45-10-94, relating to the Joint Legislative Ethics Committee, and was based on Ga. L. 2005, p. 859, § 26/HB 48; Ga. L. 2010, p. 838, § 10/SB 388 and was

repealed by Ga. L. 2010, p. 1173, § 29, effective January 10, 2011.

Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified

by the General Assembly, provides, in part, that this Act applies to all reports filed on and after January 10, 2011.

45-10-90. Definitions.

As used in this part, the term:

(1) "Abuse of official power" means threatening to use the powers or personnel of a state entity for personal purposes of coercion, retaliation, or punishment.

(2) "Clerical officer" means the Clerk of the House of Representatives or the Secretary of the Senate.

(3) "Committee" means the House Committee on Ethics or the Senate Ethics Committee.

(4) "Conflict of interest" means an individual has multiple interests and uses his or her official position to exploit, in some way, his or her position for his or her own direct, unique, pecuniary, and personal benefit.

(5) "Employee" means any person who is employed by the legislative branch of state government.

(6) "Improper conduct" means a member of the General Assembly:

(A) Engages in conduct that is a conflict of interest;

(B) Engages in conduct that is an abuse of official power; or

(C) Illegally uses an employee in a political campaign.

(7) "Member of the General Assembly" means any person elected and certified as a member of the General Assembly.

(8) "Sexual harassment" means making sexual advances, requesting sexual favors, or other verbal or physical conduct of a sexual nature when:

(A) Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;

(B) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the employee; or

(C) Such conduct interferes with the employee's work performance or creates an intimidating, hostile, or offensive work environment. (Code 1981, § 45-10-90, enacted by Ga. L. 2010, p. 1173, § 29/SB 17.)

45-10-91. Method of addressing improper conduct.

(a) Any person may file a complaint with the clerical officer of the appropriate chamber alleging improper conduct involving a member of the General Assembly. Any employee may file a complaint with the

clerical officer of the appropriate chamber alleging sexual harassment by a member of the General Assembly. The clerical officer shall designate the place where such complaints may be filed, provide instruction necessary to properly submit a complaint, and prescribe forms for such complainants. Complaints shall be submitted in writing and verified under oath to the best information, knowledge, and belief of such person. Any person who knowingly provides false information in executing a complaint under this Code section commits the offense of false swearing within the meaning of Code Section 16-10-71.

(b) The clerical officer shall forward, within one business day of receipt, the original complaint and all materials appended to such complaint in a confidential report to the presiding officer of the appropriate chamber and to the chairperson of the House Committee on Ethics or the chairperson of the Senate Ethics Committee, as appropriate. (Code 1981, § 45-10-91, enacted by Ga. L. 2010, p. 1173, § 29/SB 17.)

45-10-92. Abuse of power and improper use of state employees by General Assembly members.

(a) The committee shall serve the person against whom any complaint is made a copy of the complaint by hand delivery or statutory overnight delivery or mailed by certified mail, return receipt requested, within five business days of the committee's receipt of such complaint.

(b) The committee shall conduct a preliminary investigation of the merits of such complaint. If a complaint alleges a violation by one of the members of the committee, such member shall recuse himself or herself. If there are found no reasonable grounds to believe that improper conduct or sexual harassment has occurred, the complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material. The committee shall not be required to conduct a hearing if there are no reasonable grounds to believe that improper conduct or sexual harassment has occurred. If the committee determines that there are such reasonable grounds to believe that improper conduct or sexual harassment has occurred, it shall give notice by summoning the persons believed to have committed the violation to a hearing. The rules of the committee shall be invoked if a hearing occurs. The committee may report suspected violations of law to the appropriate law enforcement authority.

(c) Nothing in this Code section shall be construed to limit or encumber the right of the committee to initiate on probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations to investigate improper conduct or sexual harassment.

(d) The committee shall adopt a retention standard for complaints and documents attached thereto. (Code 1981, § 45-10-92, enacted by Ga. L. 2010, p. 1173, § 29/SB 17.)

CHAPTER 11

MISCELLANEOUS OFFENSES CONCERNING PUBLIC OFFICERS AND EMPLOYEES

Sec.		Sec.	
45-11-1.	Offenses involving public records, documents, and other items.		demeanor; applicability; indictment.
45-11-4.	Unprofessional conduct; mis-	45-11-8.	Engaging in bail bond business.

45-11-1. Offenses involving public records, documents, and other items.

(a) If any public officer or other person shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, or contract; or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or falsify any document or instrument recorded or any registry, acknowledgment, or certificate; or shall alter, deface, or falsify any minutes, document, book, or any proceeding whatever of or belonging to any public office within this state; or if any person shall cause or procure any of these offenses to be committed, or to be in any manner concerned therein, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two years nor more than ten years.

(b) Whosoever, without authority and with the intention of converting to his own or another's use, willfully conceals any record, book, or document while on the premises of any public office or willfully removes any book, document, record, or other property from any such office shall be guilty of stealing such property. Proof of the concealment of such record or other office property while still on the premises shall be prima-facie evidence of intent to steal.

(c) A public officer or employee may detain and question any person whose conduct causes reasonable ground for suspicion that such person is engaging in stealing or criminal damage to the records in a public office.

(d) A public officer or employee causing the arrest or detention of any person pursuant to this Code section shall not be held civilly liable for slander, malicious prosecution, false imprisonment, malicious arrest, assault and battery of the person, physical injuries and mental suffering, or any other suit for damages arising from such arrest, whether such arrest takes place on the public property or after close pursuit from such premises by such officer; provided, however, that, in causing

the arrest of such person, the officer or employee had probable cause at the time of such arrest to believe that the person was committing unlawful acts relating to public documents and the arrest and detention were under reasonable circumstances.

(e) Upon presentation of affirmative proof, the Secretary of State or his or her designee may initiate action through the Attorney General or other appropriate jurisdiction to prevent the sale, transfer, conveyance, destruction, or alienation of any records, books, documents, or other office property which has been unlawfully removed from any public office or public officer or employee. Upon request of the Secretary of State or his or her designee, the Attorney General or other appropriate jurisdiction shall have the authority to enjoin, recover, and replevin such records, books, documents, or other office property.

(f) As used in this Code section, the term:

(1) "Records, books, documents, or other office property" means, but is not limited to, all books, plates, pictures, photographs, films, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, personal papers, organization records, documents, letters, public records, microforms, sound recordings, audio-visual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, or other documentary, written, or printed material, regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any public office;

(2) "Public office" means any office held, used, or controlled for public purposes by any department, agency, board, or branch of state, county, or municipal government without reference to the ownership of the building or of the realty on which it is situated. Such term includes any archives, library, or records storage area maintained by such governments;

(3) "Avoid" means to annul, cancel, make void, destroy the efficacy of, or destroy without authority any record, book, document, or other office property;

(4) "Public officer or employee" means any officer or employee having custody of or responsibility for any records, books, documents, or other office property referred to in this Code section. (Laws 1833, Cobb's 1851 Digest, p. 805; Code 1863, § 4366; Code 1868, § 4404; Code 1873, § 4471; Code 1882, § 4471; Penal Code 1895, § 280; Penal Code 1910, § 284; Code 1933, § 89-9903; Ga. L. 1977, p. 568, § 1; Ga. L. 2004, p. 591, § 1.)

The 2004 amendment, effective July 1, 2004, added subsection (e) and redesignated former subsection (e) as present subsection (f).

45-11-4. Unprofessional conduct; misdemeanor; applicability; indictment.

(a) As used in this Code section, the term:

(1) "County officer" shall mean any elected county officer, including the judge of the probate court, clerk of the superior court, tax receiver, tax collector, and tax commissioner where such office has replaced the tax receiver and tax collector, and any county commissioner.

(2) "Municipal officer" shall mean any mayor or elected member of any municipal governing authority.

(3) "Public officer" shall mean a county officer, a municipal officer, and state officials as provided in Code Section 45-15-11.

(b) A public officer may be charged under this Code section for:

(1) Malpractice, misfeasance, or malfeasance in office;

(2) Using oppression or tyrannical partiality in the administration or under the color of his or her office;

(3) When required by law, willfully refusing or failing to preside in or hold his or her court at the regular terms thereof, or when it is his or her duty under the law to do so;

(4) Using any other deliberate means to delay or avoid the due course or proceeding of law; or

(5) Willfully and knowingly demanding more cost than he or she is entitled to by law in the administration and under color of his or her office.

(c) A conviction for violating subsection (b) of this Code section shall be punished as for a misdemeanor and, upon conviction in a court of competent jurisdiction, the accused shall be removed from office.

(d) This Code section shall only apply to a public officer charged under subsection (b) of this Code section. This Code section shall not apply when a public officer is charged with any other crime alleged to have occurred while such official was in the performance of an official duty.

(e) This Code section shall only apply to a public officer holding office at the time of indictment and not to former office holders.

(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially set forth the merits of the complaint against the accused public officer. A copy of the proposed bill of indictment shall be served on the accused public officer at least 15 days before it is presented to the grand jury.

(g) The accused shall have the right to appear before the grand jury to make such sworn statement as he or she shall desire at the conclusion of the presentation of the state's evidence. The accused shall not be subject to examination, either direct or cross, and shall not have the right individually or through his or her counsel to examine the state's witnesses. The accused and his or her counsel shall have the right to be present during the presentation of all evidence and alleged statements of the accused on the proposed indictment, presentment, or accusation, after which the accused and his or her counsel shall retire instanter from the grand jury room to permit the grand jury to deliberate upon the indictment.

(h) At any time during the presentation of evidence or during deliberations, the grand jury may amend the indictment or instruct the district attorney to cause a new indictment to be drawn as in any other case. In such case, a copy of the amendment or new indictment, if it relates to the accused public official, shall be provided to the accused public official and his or her counsel.

(i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be published in open court and shall be placed on the superior court criminal docket of cases to be tried by a trial jury. (Laws 1833, Cobb's 1851 Digest, pp. 644, 809; Code 1863, § 4391; Ga. L. 1865-66, p. 233, § 1; Code 1868, § 4432; Ga. L. 1873, p. 23, § 1; Code 1873, § 4504; Code 1882, § 4504; Ga. L. 1895, p. 63, § 1; Penal Code 1895, §§ 291, 292; Penal Code 1910, §§ 295, 296; Code 1933, §§ 89-9907, 89-9908; Ga. L. 1967, p. 858, § 1; Ga. L. 1975, p. 1325, § 1; Ga. L. 1983, p. 884, § 3-33; Ga. L. 1984, p. 22, § 45; Ga. L. 1988, p. 298, § 1; Ga. L. 1990, p. 1969, § 1; Ga. L. 2001, p. 487, § 3; Ga. L. 2011, p. 59, § 1-67/HB 415.)

The 2011 amendment, effective July 1, 2011, substituted "trial jury" for "petit jury" at the end of subsection (i).

Editor's notes. — Ga. L. 2011, p. 59, § 1-1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

OFFICIALS INCLUDED

INDICTMENT AND RIGHT TO HEARING

General Consideration

Purpose of O.C.G.A. § 45-11-4.

O.C.G.A. § 45-11-4 furthers the legitimate state interest of protecting certain government officials, vested with the authority to exercise discretion, against possible frivolous indictments pursued by persons aggrieved by the exercise of that discretion because the legislative rationale is that, if these officials do not have such protection, their reputation and performance of their duties could be compromised while they are defending baseless charges; by enacting O.C.G.A. § 17-7-52, the General Assembly intended to afford peace officers the enhanced protections given to other public officials regarding accusations arising from the performance or nonperformance of their official duties, and thus, the legitimate purpose of O.C.G.A. § 17-7-52, in conjunction with § 45-11-4, is to protect peace officers from harassing or frivolous charges before the grand jury. *State v. Smith*, 286 Ga. 409, 688 S.E.2d 348 (2010).

Grand jury power not limited.

Under O.C.G.A. § 45-11-4(g), a public officer who was accused of unprofessional conduct had the right to appear before the grand jury to make such sworn statement as desired at the conclusion of the presentation of the state's evidence; however, a public official who was the topic of a critical grand jury presentment did not have any right to maintain the secrecy of the document in circumstances in which, contrary to the provisions of O.C.G.A. § 15-12-80, the grand jury caused the premature release of its presentments by giving them to the county attorney, before presenting them to the superior court for publication. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 632 S.E.2d 113 (2006).

Cited in *Atkinson v. State*, 263 Ga. App. 274, 587 S.E.2d 332 (2003).

Officials Included

Peace officers.

Where defendant quashed the indictment against defendant due to the state's failure to allow defendant to appear before the grand jury as was defendant's right as a police officer under O.C.G.A. § 17-7-52

and O.C.G.A. § 45-11-4, the state did not appeal as was its right under O.C.G.A. § 5-7-1(a)(1); the state instead obtained an accusation against defendant, and the trial court quashed the accusation due to the state's failure to allow defendant to appear before the grand jury, thus, the state could not argue, in opposing defendant's motion to quash the accusation, that defendant was not performing defendant's official duties at the time of the alleged criminal conduct. Furthermore, since the trial court had previously decided this issue against defendant, res judicata under O.C.G.A. § 9-12-40 barred further litigation of the issue. *State v. Allen*, 262 Ga. App. 724, 586 S.E.2d 378 (2003).

Grand jury testimony of former police officer excluded. — O.C.G.A. § 45-11-4(e), which stripped former police officer's rights to avoid cross-examination and have the officer's attorney present during grand jury testimony, could not constitutionally be applied retroactively, and the trial court properly excluded the officer's grand jury testimony obtained in violation of the officer's rights under the former version of this section. *State v. Lindsay*, 255 Ga. App. 464, 566 S.E.2d 41 (2002).

Indictment and Right to Hearing

Motion to quash indictment denied.

Trial court properly denied defendant's demurrer and motion to quash based upon the state's alleged violation of defendant's rights under O.C.G.A. § 45-11-4(g) and (h), with regard to the procedure to be followed when charging a public officer with a crime, as defendant failed to show that the state violated any of defendant's rights under the statute. *Brandenburg v. State*, 292 Ga. App. 191, 663 S.E.2d 844 (2008), cert. denied, 2008 Ga. LEXIS 921 (Ga. 2008).

Motion to quash indictment improperly granted. — Trial court's order quashing an indictment filed against the defendant, a mayor, was reversed, as: (1) it was undisputed that the defendant was not charged under O.C.G.A. § 45-11-4(b); (2) the prosecutor declined to charge the defendant under that section of the statute; and (3) the fact that the defendant

could have been charged under O.C.G.A. § 45-11-4(b) did not entitle the defendant to protection under O.C.G.A. §§ 45-11-4(f) and (g). *State v. West*, 283 Ga. App. 302, 641 S.E.2d 289 (2007).

Notice of specific time and place of indictment — O.C.G.A. § 45-11-4 must be construed necessarily to include the right to notice of the specific time that the proposed indictment will be before the grand jury, and common sense requires that the right to notice also include the location of the presentment because the statute unequivocally confers upon the accused the rights to appear before the grand jury to make a sworn statement at the conclusion of the state's evidence and, either in person or through counsel, to be physically present during the state's presentation of all evidence relevant to the proposed indictment, presentment, or accusation, O.C.G.A. § 45-11-4(g), and the task of providing the notice to the accused of the date, time, and place of the state's evidentiary showing logically and pragmatically must lie with the state. *State v. Smith*, 286 Ga. 409, 688 S.E.2d 348 (2010).

Notice of presentment required. — Court of appeals did not err in finding that the state failed to notify the defendant when the proposed indictment would be presented and in directing that the defendant's convictions be set aside because notice of the specific time and place of the grand jury presentment was required to be provided to the defendant by the state; timely serving the accused with a copy of the proposed bill of indictment but failing to timely inform the accused of when and where the reckoning with the grand jury will occur is not substantial compliance with the requirements of O.C.G.A. §§ 17-7-52 and 45-11-4 in regard to notification to the accused, and the required notice of the date, time, and location of the expected grand jury presentment implicit in § 45-11-4(g) is that of reasonable notice, that is, notice calculated to provide the accused a fair and full opportunity to exercise the rights provided by § 45-11-4(g). *State v. Smith*, 286 Ga. 409, 688 S.E.2d 348 (2010).

Defendant had no right to appear before grand jury.

Trial court did not err in finding that

the defendant, who was an officer with a college police department, was not entitled to be present and make a statement pursuant to O.C.G.A. §§ 17-7-52(a) and 45-11-4 when the defendant's case was presented to the grand jury because the indictment did not allege that the crimes occurred while the defendant was performing the defendant's duties; the defendant was not on campus as defined by O.C.G.A. § 20-8-1(1), and the record did not show that the defendant's official duties as a campus police officer included the commission of the acts at issue while the defendant was off duty and engaged in leisure activities outside of the defendant's jurisdiction. *Worthy v. State*, 307 Ga. App. 297, 704 S.E.2d 808 (2010).

Officer entitled to statutory protections. — Where defendant, a police officer, was charged with misdemeanor traffic violations of speeding and failing to reduce speed when approaching an intersection, defendant was entitled to the statutory protections of O.C.G.A. §§ 17-7-52 and 45-11-4 afforded to police officers charged with a crime. *State v. Lockett*, 259 Ga. App. 179, 576 S.E.2d 582 (2003).

Charge of false writings and statements, in violation of O.C.G.A. § 16-10-20, which arose during the performance of official duties by the defendant, a police officer, should have been dismissed because proper notice pursuant to O.C.G.A. §§ 17-7-52 and 45-11-4 was not given to the defendant; other charges against the defendant were not subject to dismissal as those charges did not arise in the performance of official duties, and the lack of notice did not improperly influence or infect the other convictions. *Wiggins v. State*, 280 Ga. 268, 626 S.E.2d 118 (2006).

Lack of proper notice to police officer. — With regard to a defendant's conviction on three counts of false statements and writings, the trial court erred by denying the defendant's motion for a new trial as a result of erring by denying the defendant's plea in abatement and motion to dismiss the indictment as the state violated the notice provisions under O.C.G.A. §§ 17-7-52 and 45-11-4, with respect to peace officers and public officials, by failing to notify the defendant when the proposed indictment would be presented

to the grand jury. The defendant, a police officer and police chief of two municipalities, was accused of falsifying time records and, as a police officer, was entitled to the notice set forth under the statutes. *Smith v. State*, 297 Ga. App. 300, 676 S.E.2d 750 (2009), *aff'd*, 286 Ga. 409, 688 S.E.2d 348 (2010).

45-11-5. Extortion generally.

JUDICIAL DECISIONS

Cited in *In re Williams*, 284 Ga. 96, 663 S.E.2d 181 (2008).

45-11-8. Engaging in bail bond business.

(a) It shall be unlawful for any elected official, officer of the court, law enforcement officer, or attorney in this state to engage either directly or indirectly in the bail bond business. For purposes of this Code section, “elected official” shall not include a person who is elected to the local school board.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1972, p. 403, §§ 1, 2; Ga. L. 1986, p. 303, § 1; Ga. L. 2004, p. 593, § 1; Ga. L. 2010, p. 437, § 1/HB 980.)

The 2004 amendment, effective July 1, 2004, added the last sentence in subsection (a).

The 2010 amendment, effective July 1, 2010, deleted “; provided, however, that any such person shall not be allowed to participate in the operation of a bail bond business within the jurisdiction of the

office to which he or she is elected” following “school board” at the end of the second sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “a person who is” was substituted for “persons who are” in subsection (a).

CHAPTER 12

GOVERNOR

Article 2

Powers and Duties Generally

Sec.

swine thieves.

Article 3

Appointments and Vacancies

45-12-61. Campaign contributions and judicial appointments.

Sec.

45-12-35. Reward for detection or apprehension of perpetrators of felonies or cattle, horse, or

Article 4

Office of Planning and Budget

PART 1

MANAGEMENT OF BUDGETARY AND FINANCIAL AFFAIRS

Sec.

- 45-12-71. Definitions.
- 45-12-72. Establishment of Office of Planning and Budget; general provisions.
- 45-12-73. Powers and duties generally.
- 45-12-75. Budget report — Contents and form.
- 45-12-75.1. (Repealed effective June 30, 2020) Zero-base budgeting; intent; departmental priority lists.
- 45-12-78. Heads of budget units to submit annual estimates; preparation and submission of budget estimates of legislative and judicial agencies; review of budget estimates by Office of Planning and Budget.
- 45-12-82. Periodic work programs to be filed; funds not to be allotted until program approved; content and form of program; amendment of program; filing of copies of program.
- 45-12-83.1. Display of state flag by agencies.
- 45-12-85. Examination and investigation of periodic work programs and requests for allotment of funds.
- 45-12-86. Governor authorized to require state agencies to reserve specified appropriations for budget reductions and withhold a percentage of agency allotments to maintain spending within actual revenues.
- 45-12-88. Budget units to furnish information to Budgetary Responsibility Oversight Committee before instituting new programs.
- 45-12-92. Revenue collections to be paid

Sec.

to state treasury on monthly basis; effect of failure of budget unit to comply with Code section; user fee defined; reporting.

- 45-12-92.1. Fees which are not revenue measures; utilization of proceeds.
- 45-12-93. Revenue shortfall reserve; reservation of surplus state funds; appropriation and release of funds; limit on amount of reserve.
- 45-12-95. Duty of Office of Planning and Budget to encourage state agencies to identify and implement cost-saving measures and to decentralize state government.

PART 2

REVIEW OF APPLICATIONS FOR FEDERAL ASSISTANCE AND STATE CONTRACTS

Subpart 1

Federal Assistance

- 45-12-110. Notification of intention to apply for federal assistance; adoption and promulgation of rules and regulations and forms by House Budget Office, Senate Budget Office, and director of Office of Planning and Budget.

Subpart 2

State Contracts

- 45-12-132. Contracts exempt from subpart.

PART 4

STATE PLANNING AND DEVELOPMENT

- 45-12-171. Office to be principal state agency for coordinating development, demographic data, statistical coordination, and federal programs; applications for and receipt of financial assistance.

Sec.

45-12-172. Office to review and comment on proposed development programs and serve as liaison with levels of government.

45-12-173. Office to promote state development; duties of Governor; employment of personnel; furnishing of advice and assistance by other state officials.

45-12-175. Preparation of long-range development plans by office; designation of planning officer or representative by departments, agencies, or institutions.

Sec.

45-12-177. Office to review and establish state goals and policies; Governor to prepare annual policy document reflecting state strategic plan.

45-12-178. Ongoing review by Governor of all programs and functions in state government.

Article 6

Planning and Development

45-12-206. Cooperation of state agencies, counties, municipalities, and other political subdivisions with council.

ARTICLE 2

POWERS AND DUTIES GENERALLY

45-12-26. Defense of action in which state has interest.

Law reviews. — For note, “Perdue v. Baker: Who Has the Ultimate Power over Litigation on Behalf of the State of Georgia — the Governor or the Attorney General?,” see 21 Ga. St. U. L. Rev. 751 (2005).

gia — the Governor or the Attorney General?,” see 21 Ga. St. U. L. Rev. 751 (2005).

JUDICIAL DECISIONS

Powers of Governor and Attorney General. — Construed together, Ga. Const. 1983, Art. V and O.C.G.A. §§ 45-15-3, 45-15-6, 45-15-35, and 45-12-26, do not vest either the Georgia governor or the attorney general with exclusive power to control legal proceedings involving the State of Georgia; instead, the governor and attorney general have concurrent powers over litigation in which the state is a party. *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606 (2003).

clusive power to control legal proceedings involving the State of Georgia; instead, the governor and attorney general have concurrent powers over litigation in which the state is a party. *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 22B Am. Jur. Pleading and

Practice Forms, States, Territories, and Dependencies, § 2.

45-12-35. Reward for detection or apprehension of perpetrators of felonies or cattle, horse, or swine thieves.

(a) For the purposes of this Code section, the term “conviction” means a final judgment of conviction entered upon a verdict of guilty or upon a plea of guilty. Such judgment shall be deemed to be a final judgment when the remittitur from the appellate court of this state affirming the conviction is filed in the court below or, if the proceeding is before a federal court, when the United States Circuit Court of Appeals has affirmed the conviction.

(b) The Governor and any county or municipal governing authority shall, in their discretion, offer and cause to be paid rewards for the detection or apprehension of the perpetrator of any felony committed within this state, such reward not to exceed the sum of \$1,000.00 in felonies not capital, including arson, and not to exceed the sum of \$10,000.00 in capital felonies and arson; provided, however, that the amount offered by any local governing authority shall not exceed the aggregate amount of \$25,000.00.

(c) The Governor shall, at the Governor's discretion, offer and cause to be paid rewards for the detection or apprehension of cattle, horse, ratites, or swine thieves stealing cattle, horses, ratites, or swine within this state; and such reward shall not exceed \$1,000.00.

(d) The Governor, at his discretion, may pay any reward authorized by this Code section after conviction.

(e) No reward provided for in this Code section shall be paid to any officer who arrests such person in the regular discharge of his or her duty by virtue of process in his or her hands to be executed nor to any person who has arrested the offender prior to the publication of the reward. (Orig. Code 1863, § 65; Code 1868, § 61; Ga. L. 1872, p. 11, § 1; Code 1873, § 58; Ga. L. 1875, p. 104, § 1; Ga. L. 1878-79, p. 165, § 1; Code 1882, § 58; Penal Code 1895, § 881; Penal Code 1910, § 902; Code 1933, § 27-101; Ga. L. 1962, p. 693, § 1; Ga. L. 1966, p. 278, § 1; Ga. L. 1978, p. 2033, § 1; Ga. L. 1979, p. 1173, § 1; Ga. L. 1989, p. 290, § 1; Ga. L. 1995, p. 244, § 32; Ga. L. 1997, p. 581, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2006, p. 519, § 6/HB 1302.)

The 2006 amendment, effective April 28, 2006, near the end of subsection (b), deleted "the governing authority of a county or municipality may offer and pay such a reward only in cases in which the

Governor has first offered a reward and, in such cases," following "provided, however, that", and inserted "the aggregate amount of".

JUDICIAL DECISIONS

Reward permissible. — Reward paid to a witness in a criminal trial for information leading to an arrest and conviction was permissible under the statute and the

witness was properly cross-examined as to the reward. *Wilson v. State*, 277 Ga. 485, 591 S.E.2d 812 (2004).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 21B Am. Jur. Pleading and Practice Forms, Rewards, § 2.

ARTICLE 3

APPOINTMENTS AND VACANCIES

45-12-52. Filling of vacancies where advice and consent of Senate required; incumbent officer not to hold over beyond term; interim appointment.

OPINIONS OF THE ATTORNEY GENERAL

Rejection of appointment by Senate. — A person whose appointment has been affirmatively rejected by the Senate is not eligible to be reappointed to succeed oneself in that office for at least one year following the Senate rejection. 2003 Op. Att’y Gen. No. 2003-5.

Senate’s declining to consider appointments. — Where the Senate de-

clined to consider and vote on gubernatorial appointments, as to those appointments made pursuant to the Governor’s authority under the Constitution or under O.C.G.A. § 45-12-52(b), because there was no affirmative rejection, the appointees are not disqualified from reappointment. 2003 Op. Att’y Gen. No. 2003-5.

45-12-53. Appointments not subject to Senate confirmation unless otherwise required.

OPINIONS OF THE ATTORNEY GENERAL

Construction of statutory provisions. — In the enactment of O.C.G.A. §§ 45-12-53 and 45-12-54, the General Assembly intended that gubernatorial appointments to statutory offices are not subject to senatorial confirmation unless:

(1) that requirement is specifically included with the statutory power of appointment; or (2) the appointment is to a “board,” a “commission,” or a “bureau” that is created or established by law. 2003 Op. Att’y Gen. No. 2003-5.

45-12-54. Appointments to boards, commissions, and bureaus subject to Senate confirmation.

Law reviews. — For article, “The Status of Administrative Agencies under the

Georgia Constitution,” see 40 Ga. L. Rev. 1109 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Construction of statutory provisions. — In the enactment of O.C.G.A. §§ 45-12-53 and 45-12-54, the General Assembly intended that gubernatorial appointments to statutory offices are not subject to senatorial confirmation unless: (1) that requirement is specifically included with the statutory power of appointment; or (2) the appointment is to a “board,” a “commission,” or a “bureau” that is created or established by law. 2003 Op. Att’y Gen. No. 2003-5.

Recommended appointees. — Gubernatorial appointments that are made based upon recommendations to the Governor of appointees by other entities are subject to the Senate confirmation requirement of O.C.G.A. § 45-12-54. 2003 Op. Att’y Gen. No. 2003-5.

State authorities. — State authorities are not generally subject to the confirmation requirement. 2003 Op. Att’y Gen. No. 2003-5.

In the rare circumstance where the

General Assembly has chosen to create by statute both an authority and a separate governing “board,” then appointments to those boards would be subject to the Senate confirmation requirement of O.C.G.A. § 45-12-54. 2003 Op. Att’y Gen. No. 2003-5.

O.C.G.A. § 45-12-54 clearly anticipates

that anything less than a Senate confirmation of gubernatorial appointees (even where the Senate never voted on confirmation) results not only in the immediate end to the appointee’s term of office, but also mandates that some other names will be submitted. 2003 Op. Att’y Gen. No. 2003-5.

45-12-61. Campaign contributions and judicial appointments.

(a) As used in this Code section, the terms “campaign committee,” “contribution,” and “expenditure” shall have the meanings set forth in Code Section 21-5-3.

(b) No person shall be eligible for appointment to fill a vacancy on the Supreme Court, the Court of Appeals, the superior courts, or the state courts if such person has made a contribution to or expenditure on behalf of the Governor or the Governor’s campaign committee either: (1) in the 30 day period preceding the vacancy, unless the person requests and is provided a refund of such contribution or reimbursement for such expenditure; or (2) on or after the date the vacancy occurs. (Code 1981, § 45-12-61, enacted by Ga. L. 2005, p. 859, § 27/HB 48.)

Effective date. — This Code section became effective January 9, 2006.

Editor’s notes. — Ga. L. 2005, p. 859, § 28, not codified by the General Assembly, provides that the provisions of that

Act do not apply to any violation occurring prior to January 9, 2006.

Law reviews. — For article on 2005 enactment of this section, see 22 Ga. St. U. L. Rev. 119 (2005).

ARTICLE 4

OFFICE OF PLANNING AND BUDGET

PART 1

MANAGEMENT OF BUDGETARY AND FINANCIAL AFFAIRS

45-12-71. Definitions.

As used in this part, the term:

(1) “Annual operating budget” means the operating budget for each budget unit which details the appropriations passed by the General Assembly for that budget unit.

(2) “Appropriation” means an authorization by the General Assembly to a budget unit to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure described in this part.

(3) "Appropriation Act" means an Act of the General Assembly which authorizes the expenditure of state money.

(4) "Budget" means the complete financial plan for the fiscal year as proposed in the budget report and modified and adopted by appropriation and revenue Acts.

(5) "Budget allotment" means a process of authorizing the withdrawal of state funds from the treasury based on a determination that the budget allotment request is consistent with an approved work program.

(6) "Budget class" means one of the kinds of expenditures denoting a class of service or commodities purchased or properties acquired as specified in the classification of expenditures provided for in this part for use in expenditure accounting, in the making of budget estimates, and in the budget reports and budgets.

(7) "Budget estimate" means the statement with accompanying explanations, as provided in this part, in which a budget unit states its financial requirements and requests appropriations.

(8) "Budget message" means the required statement by the Governor to the General Assembly after its convening which gives a summary description of the Governor's proposed financial policies and plans contained in the budget report, together with recommendations for additional revenues, if any.

(9) "Budget report" and "program budget report" mean recommendations of the Governor to the General Assembly as to financial plans and expenditures to be authorized and agency program information, with the accompanying statements and explanations provided for in this part.

(10) "Budget unit" means a department, institution, agency, or other unit of organization for which separate appropriations are made.

(11) "Core businesses" means broad policy areas that a budget unit was created to address. These are fundamental activities or groups of activities critical to the organization's overall mission.

(12) "Outcome measure" means quantitative and qualitative indicators by which the performance of a program can be assessed against adopted goals and objectives.

(13) "Program" means a discrete set of activities undertaken to carry out an agency's core businesses.

(14) "Strategic planning" means the process through which a preferred future direction and organizational mission are established

and periodically updated in light of changing trends and issues and goals, objectives, and strategies are adopted and implemented to guide an organization toward that preferred future direction.

(15) “Tax expenditure” means any statutory provision which exempts, in whole or in part, any specific class or classes of persons, income, goods, services, or property from the impact of established state taxes, including but not limited to tax deductions, tax allowances, tax exclusions, tax credits, preferential tax rates, and tax exemptions. Such term shall also include any expenditure of state tax proceeds to local governments for homeowner tax relief grants or local government assistance grants authorized by or required by any provision of Article VII of the Constitution. (Code 1933, § 40-402, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 2; Ga. L. 2005, p. 976, § 1/HB 509; Ga. L. 2010, p. 193, § 1/SB 206.)

The 2005 amendment, effective May 9, 2005, in paragraph (9), substituted “and ‘program budget report’ mean” for “means” and substituted “authorized and agency program information, with” for “authorized, with”; added the present paragraph (11); redesignated former pro-

visions of paragraph (11) as present paragraph (12); added paragraph (13); and redesignated former paragraph (12) as present paragraph (14).

The 2010 amendment, effective May 20, 2010, added paragraph (15).

45-12-72. Establishment of Office of Planning and Budget; general provisions.

(a) There is established in the office of the Governor the Office of Planning and Budget as a separate budget unit for the purpose of promoting economy and efficiency in the fiscal management of the state government. The Governor shall be ex officio director of the budget.

(b) The Governor, through the Office of Planning and Budget, shall have such supervision of every public department, agency, and institution as shall be necessary to secure uniformity and accuracy of accounts and efficient conduct of its fiscal affairs. He may inquire into the methods of conducting the affairs of any public body; he may prescribe and direct the use of such forms of accounts, records, and reports as may be necessary to further efficiency and an adequate system of records for budget-making purposes; and he may prescribe and direct the use of standards of efficiency for public employees, including the establishment of working hours.

(c) The administrative head of the Office of Planning and Budget is the director of the Office of Planning and Budget, who shall be appointed by the Governor to serve at the Governor’s pleasure. The director shall be responsible for management of the office and shall exercise supervision and control over the office. The director of the Office of Planning and Budget is authorized to employ such other

professional, technical, and clerical personnel as the director may deem necessary to carry out the duties prescribed in this part. Except as otherwise provided in this subsection, the employees of the Office of Planning and Budget shall be governed by the rules and regulations of the State Personnel Board, under Article 1 of Chapter 20 of this title. The Office of Planning and Budget shall pay its share of the administrative cost of operating the state system of personnel management in the manner prescribed in Code Section 45-20-4. All employees in the position classification policy coordinator shall be in the unclassified service as defined by Code Section 45-20-2. Any and all salary increases for such employees shall be based, in part, on each individual employee's job performance as measured by a standard operative appraisal system and, in part, on general increases given to all state employees. The Governor is authorized to delegate to the director of the Office of Planning and Budget such powers, duties, and authority under this part as the Governor deems advisable; and the Governor shall have the right to retract any such delegation at any time.

(d) The Attorney General, the state treasurer, the Comptroller General, the state revenue commissioner, and the state auditor shall render such advice and assistance and furnish such information to the Office of Planning and Budget as may be requested and needed. (Code 1933, § 40-403, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1963, p. 427, § 1; Ga. L. 1972, p. 1015, §§ 202, 206; Ga. L. 1993, p. 1399, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 446, § 2-73/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the fifth sentence of subsection (c).

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" near the beginning of subsection (d).

The 2012 amendment, effective July 1, 2012, in subsection (c), in the fifth sentence, deleted "pro rata" following "shall pay its", and substituted "state system of personnel management in the manner prescribed in Code Section 45-20-4" for "State Personnel Administration in the manner prescribed in Article 1 of Chapter 20 of this title", and substituted "as de-

fined by Code Section 45-20-2" for "of the State Personnel Administration" in the sixth sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in White v. Ga. Dep't of Motor Vehicle Safety, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

45-12-73. Powers and duties generally.

The Office of Planning and Budget, at the direction and under the control of the Governor and subject to this part, shall perform the following functions:

(1) Develop and implement a process of strategic planning to establish and periodically update an overall plan for state government and require all state agencies to develop a strategic plan that is consistent with that overall state plan. The Office of Planning and Budget may assist departments, boards, bureaus, commissions, institutions, authorities, and other agencies in developing those plans and in tailoring them to those organizations' program needs;

(2) Develop and implement a program budgeting system that relates funding to achievement of established goals and objectives, measures agency performance against attainment of planned outcomes, and provides for program evaluations for policy and funding determinations. Program evaluations may include cost benefit analyses, decision analyses, statistical analyses, comparisons with similar programs in other jurisdictions, relevant historical trends, and demographic factors and other useful techniques;

(3) Develop financial policies and plans as the basis for budget recommendations to the General Assembly and prepare detailed documents in accordance with such financial policies and plans for presentation to the General Assembly. The Office of Planning and Budget shall make its records and information available at all times to the General Assembly and its designees;

(4) Coordinate the fiscal affairs and procedures of the state to assure the carrying out of the financial plans and policies approved by the General Assembly, including the administration of a system of annual operating budgets and amendments thereto and of expenditure control;

(5) Develop plans for improvements and economies in organization and operation of the state agencies and implement such plans as are approved by the General Assembly;

(6) Develop a long-term capital improvements budget which emphasizes decentralization of state government and which is consistent with the overall strategic plan for consideration by the General Assembly;

(7) Analyze financial and administrative aspects of proposed legislation;

(8) Provide such assistance as the General Assembly may request and be available to assist its appropriations committees with any needed information or material;

(9) Perform all other duties provided for in this part and such other duties as the General Assembly may from time to time prescribe;

(10) In an effort to improve responsiveness of government and the effective and efficient delivery of services, provide leadership in initiating, organizing, and operating partnerships and collaborations among public and private entities having common or overlapping missions, purposes, roles, responsibilities, clients, or other similar relationships;

(11) Consult with the General Assembly on a regular basis concerning the development and implementation of the strategic planning process, the development of outcome measures for program evaluation, and the implementation of the other provisions of this article; and

(12) Promulgate rules and regulations governing:

(A) The use of passenger-carrying automobiles purchased or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state;

(B) The rental of passenger-carrying automobiles by officials, officers, and employees of the state and for reimbursement of rental expense;

(C) A system of billings for motor vehicle service including the provision of fuel, maintenance, and repair costs for vehicles which are owned or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state; and

(D) Acquisition, utilization, preventive maintenance, repair, and replacement of all other motor vehicles, exclusive of the off-the-road and highly specialized motor vehicle equipment as defined by the Office of Planning and Budget, owned or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state. (Code 1933, § 40-404, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 3; Ga. L. 1994, p. 1865, § 1; Ga. L. 2005, p. 117, § 16/HB 312; Ga. L. 2005, p. 976, § 2/HB 509.)

The 2005 amendments. — The first 2005 amendment, effective July 1, 2005, deleted “and” at the end of paragraph (10); substituted “; and” for a period at the end

of paragraph (11); and added paragraph (12). The second 2005 amendment, effective May 9, 2005, substituted "a program" for "an outcome based" near the beginning of paragraph (2).

Editor's notes. — Resolution Act No. 48 (Senate Resolution No. 101), approved

April 19, 1979 (Ga. L. 1979, p. 1365), relating to the development, issuance, review, and revision of employee travel reimbursement policies by the Department of Audits and the Office of Planning and Budget, was repealed by Ga. L. 2005, p. 694, § 41.

45-12-75. Budget report — Contents and form.

The budget report shall contain and include the following information:

(1) Summary statements of the financial condition of the state, accompanied by such detailed schedules of assets and liabilities as the Governor deems desirable, which shall include, but not be limited to, the following:

(A) A comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of each of the two fiscal years last concluded;

(B) Summary statements of fund balances showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years last concluded, the actual income of that year, the total appropriation of that year, and the total expenditures of that year; and

(C) Similar summary statements of the estimated fund balances for the current fiscal year and the next fiscal year;

(2) Statements of income and receipts for each of the two fiscal years last concluded, and the estimated income and receipts of the current fiscal year and the next fiscal year, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statements of income and estimated income shall be itemized by sources and by the budget unit collecting the same. The statements of receipts and estimated receipts shall be itemized by sources and by the budget unit receiving the same. Existing sources of income and receipts shall be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of income or receipts shall be explained;

(3) Summary statements of expenditures and disbursements for each of the two fiscal years last concluded, itemized by budget units under functional heads and showing the amounts expended for each major function of the government;

(4) A statement of the surplus account, showing the excess of all current assets over all current liabilities as of the end of each of the

two fiscal years last concluded and all changes in surplus account during each of such two fiscal years;

(5) Detailed comparative statements of expenditures and requests for appropriations by funds, budget units, and budget classes, showing the expenditures for each of the two fiscal years last concluded, the budget of the current year, and the Governor's recommendations for appropriations for each budget unit for the next fiscal year. Following the lists of actual and proposed expenditures of each budget unit there shall be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts expended and the amounts recommended, with such descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as is considered necessary or desirable. In connection with each budget class of capital outlays involving construction projects to be completed in two or more fiscal years, there shall be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs shall be projected for a period that is consistent with each organization's approved strategic plan as summarized in the budget;

(6) A summary statement of the cash resources estimated to be available at the beginning of the next fiscal year and the estimated cash receipts of the fiscal year as compared with the total recommended amounts of appropriation for all budget classes for the year and, if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of receipts from any proposed additional revenues;

(7) A draft of a proposed General Appropriations Act or Acts embodying the Governor's budget report and recommendations for appropriations for the next fiscal year and drafts of such revenue and other Acts as may be recommended for putting into effect the proposed financial plan. The recommended appropriation for each budget unit shall be specified in a separate section of the General Appropriations Act. The total amount of appropriations recommended shall not exceed the cash resources available to meet expenditures under such appropriations;

(8) A tax expenditure review for the state. Such review shall be prepared by the Department of Audits and Accounts and provided to the Office of Planning and Budget in a timely manner for inclusion as part of the budget report. Such review shall detail for each tax expenditure item that amount of tax revenue forgone for at least a three-year period, including the period covered in the Governor's

budget submitted the preceding January, the current budget, and an estimate of one future year; a citation of the statutory or other legal authority for the expenditure; the year in which it was enacted; and the tax year in which it became effective. The tax expenditure information required under this paragraph shall be tracked and compiled by the Department of Revenue and provided in a timely manner to the Department of Audits and Accounts. Taxes included in this report shall cover all state taxes collected by the Department of Revenue. The Department of Revenue shall be authorized to provide estimations in the event the required tax expenditure information cannot be actually determined from available information. The Department of Revenue shall not be authorized to impose additional reporting requirements on any person or entity in order to track and compile any tax expenditure information. Nothing in this paragraph shall preclude the Department of Audits and Accounts from contracting out the preparation and analysis associated with the development of such report to any member institution of The University System of Georgia; and

(9) Such other information as the Governor deems desirable or as is required by law. (Code 1933, § 40-406, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1963, p. 427, § 2; Ga. L. 1973, p. 673, §§ 1-5; Ga. L. 1993, p. 1914, § 4; Ga. L. 2010, p. 193, § 2/SB 206; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2010 amendment, effective May 20, 2010, deleted “and” at the end of paragraph (7), added paragraph (8), and redesignated former paragraph (8) as present paragraph (9).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “forgone” for “foregone” in the third sentence of paragraph (8).

45-12-75.1. (Repealed effective June 30, 2020) Zero-base budgeting; intent; departmental priority lists.

(a) The Governor in preparing his or her budget report under Code Section 45-12-75, and budget units in preparing their budget estimates under Code Section 45-12-78, shall make use of zero-base budgeting as provided in this Code section. The requirements of this Code section shall apply to the budget report presented to the General Assembly in January of 2013 and each year thereafter.

(b) It is the intent of this Code section that in any given year the Governor’s budget report shall include zero-base budgeting for the agencies and programs as identified by the House Budget Office and Senate Budget Office in consultation with The Governor’s Office of Planning and Budget. The House Budget Office and Senate Budget Office in consultation with The Governor’s Office of Planning and Budget shall require each agency to use zero-base budgeting at least

once every ten years and shall not require any agency or program to use zero-base budgeting more often than once every eight years. The House Budget Office and Senate Budget Office in consultation with The Governor's Office of Planning and Budget shall balance the number of agencies and programs submitting zero-base budgets with staff available for preparing a budget and staff available for conducting review and analysis of the budget submission. The Governor and the Office of Planning and Budget shall prescribe the forms and format for zero-base budgets and serve as the entity designated for coordinating the preparation of zero-base budgets by the executive branch.

(c) In the years in which zero-base budgeting applies, each budget unit shall include in its budget estimate an analysis summarizing the prior two fiscal years and proposed spending plans by program, object class, and revenue source. Information presented shall include the following:

(1) A statement of the budget unit's departmental and program purposes; effectiveness, efficiency, and equity measures; and program size indicators; and

(2) A priority listing encompassing all alternative funding levels for all programs.

(d) In the years in which an agency or program submits a zero-base budget, the Governor shall include in the budget report relevant materials related to each budget unit's submission under subsection (c) of this Code section and such other relevant material as deemed appropriate by the Governor.

(e) Without in any way limiting the generality of the other provisions of this Code section, it is specifically provided that the Board of Regents of the University System of Georgia shall be a budget unit subject to this Code section and the programs of the board of regents shall be periodically subject to zero-base budgeting as provided for in this Code section and in keeping with the Constitution.

(f) Without in any way limiting the generality of the other provisions of this Code section, it is specifically provided that in the budget report presented to the General Assembly in January of 2013 the Department of Education's budget shall be submitted as a zero-base budget according to the guidelines contained in this Code section.

(g) The judicial branch is encouraged to participate in the zero-base budgeting process.

(h) The Joint Fiscal Affairs Subcommittee, as authorized under Code Section 28-5-23, may review all information and materials related to any zero-base budget request to include hearings as necessary.

(i) The Office of Planning and Budget and the Joint Fiscal Affairs Subcommittee shall maintain effectiveness, efficiency, and equity measures related to zero-base budgeting.

(j) This Code section shall be automatically repealed on June 30, 2020, unless reauthorized by the General Assembly. (Code 1981, § 45-12-75.1, enacted by Ga. L. 2012, p. 987, § 1/SB 33.)

Effective date. — This Code section became effective May 2, 2012.

Editor's notes. — This Code section formerly pertained to annual continuation budget report. The former Code section was based on Code 1981, § 45-12-75.1, enacted by Ga. L. 1993, p. 1914, § 5; Ga. L. 2005, p. 1036, § 30/SB 49 and was repealed by Ga. L. 2008, p. VO1, § 2-2, effective January 28, 2008.

Ga. L. 2008, p. VO1, which repealed the former Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-12-78. Heads of budget units to submit annual estimates; preparation and submission of budget estimates of legislative and judicial agencies; review of budget estimates by Office of Planning and Budget.

(a) The head of each budget unit, other than the General Assembly and the judiciary, shall annually submit to the Office of Planning and Budget estimates of the financial requirements of the budget unit for the next fiscal year, by the date set by the director of the Office of Planning and Budget, which shall be no earlier than August 1 of each year, on the forms and in the manner prescribed by the Office of Planning and Budget, with such explanatory data as is required by the Office of Planning and Budget. Such submission shall utilize such budget classes and be within such expenditure parameters as may be established by the Governor. The head of a budget unit also may submit such additional data as is helpful. The estimates so submitted shall bear the approval of the board or commission of each budget unit for which a board or commission is constituted.

(b) Except as otherwise provided in this subsection, the budget estimates for the General Assembly, including all the legislative agencies, shall be prepared by the Speaker of the House of Representatives and the President of the Senate and such other legislative officers as appropriate and shall be submitted to the director of the budget at the same time as other budget estimates are submitted. The Department of Audits and Accounts, for the purpose of this part, is a legislative agency and shall be construed in all respects as such; and the budget estimate for said department shall be prepared by the state auditor and shall be included in the budget report without revision and shall not be subject to review or control by the Office of Planning and Budget. The state

treasurer shall assist in the preparation of these budget estimates, if requested. Effective with the budget estimates for the fiscal year beginning July 1, 1985, the budget estimates for the Senate, the office of the Lieutenant Governor, and the office of the Secretary of the Senate shall be prepared by the Senate; the budget estimates for the House of Representatives, the office of the Speaker of the House of Representatives, and the office of the Clerk of the House of Representatives shall be prepared by the House of Representatives; and the budget estimates for the Office of Legislative Counsel, the Office of Legislative Fiscal Officer, and the Office of Legislative Budget Analyst shall be prepared by the Legislative Services Committee. All of such budget estimates shall include such object classes as the Legislative Services Committee shall determine, and transfers of funds may be made between such object classes. Funds may also be transferred between the Senate, the office of the Lieutenant Governor, and the office of the Secretary of the Senate. Funds may also be transferred between the House of Representatives, the office of the Speaker of the House of Representatives, and the office of the Clerk of the House of Representatives. Funds may also be transferred between the Office of Legislative Counsel, the Office of Legislative Fiscal Officer, and the Office of Legislative Budget Analyst.

(c) Budget estimates for the judiciary shall be prepared by the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals and such other judicial officers as appropriate and shall be submitted to the director of the budget at the same time as other budget estimates are submitted. The state treasurer shall assist in the preparation of these budget estimates, if requested.

(d) All of the data relative to the legislative and judicial branches of the government shall be for the information and guidance of the Office of Planning and Budget in estimating the total financial needs of the state for the ensuing period, but none of these estimates shall be subject to revision or review by the Office of Planning and Budget and must be included in the budget report as prepared by it.

(e) To effect the goal of decentralization, prior to September 1 of each year, the Office of Planning and Budget shall send all requests for new, expanded, relocated, or renovated rental real estate space to the State Properties Commission. The State Properties Commission shall return such evaluation to the Office of Planning and Budget prior to the Governor's submission of the budget to the General Assembly as provided in Code Section 45-12-79. (Code 1933, § 40-409, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1973, p. 673, §§ 6, 7; Ga. L. 1984, p. 359, § 8; Ga. L. 1985, p. 149, § 45; Ga. L. 1985, p. 669, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 6; Ga. L. 1994, p. 1865, § 2; Ga. L. 2005, p. 976, § 3/HB 509; Ga. L. 2008, p. 577, § 19/SB 396; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2005 amendment, effective May 9, 2005, in subsection (a), substituted “The” for “Not later than September 1 of each year, the” at the beginning, inserted “annually” following “judiciary, shall” and inserted “by the date set by the director of the Office of Planning and Budget, which shall be no earlier than August 1 of each year,” following “next fiscal year,” in the first sentence.

The 2008 amendment, effective July 1, 2008, in subsection (e), at the end of the first sentence substituted “State Properties Commission” for “Department of Ad-

ministrative Services for an evaluation to determine conformity with Article 2 of Chapter 5 of Title 50, the ‘State Space Management Act of 1976’” and substituted “State Properties Commission” for “Department of Administrative Services” at the beginning of the second sentence.

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the beginning of the third sentence of subsection (b) and near the beginning of the last sentence of subsection (c).

45-12-82. Periodic work programs to be filed; funds not to be allotted until program approved; content and form of program; amendment of program; filing of copies of program.

The Governor, through the Office of Planning and Budget, shall require each budget unit, other than those of the legislative branch and the judicial branch, to file periodic work programs with the Office of Planning and Budget at such time as the Office of Planning and Budget shall direct. As provided in Code Section 45-12-83, no allotment of funds shall be approved for any budget unit until such budget unit has filed a periodic work program with the Office of Planning and Budget and the periodic work program has been approved by the Governor. The work program shall be presented on forms prescribed by the Office of Planning and Budget and shall contain such information as the Governor, through the Office of Planning and Budget, may require. The work program shall include the amount of the portion of the appropriation required for the period’s expenditures based on the budget prepared as provided in this part. Periodic work programs may be amended from time to time in such manner as the Office of Planning and Budget may require. A duplicate copy of all of the periodic work programs and any amendments thereto shall be filed simultaneously with the Office of Planning and Budget, the state treasurer, the state auditor, the Senate Budget Office, and the House Budget Office. (Code 1933, § 40-414, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1982, p. 3, § 45; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 8; Ga. L. 2008, p. VO1, § 1-1/HB 529; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2008 amendment, effective January 28, 2008, substituted “the Senate Budget Office, and the House Budget Office” for “the Comptroller General, and the Office of Legislative Budget Analyst” at the end of the last sentence. See the Editor’s note.

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of the last sentence.

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was

passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-12-83.1. Display of state flag by agencies.

(a) As used in this Code section, the term “agency” means:

(1) Every state department, agency, board, bureau, commission, public corporation, and authority;

(2) Every county, municipal corporation, school district, or other political subdivision of this state;

(3) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state; and

(4) Every city, county, regional, or other authority established pursuant to the laws of this state.

(b) Notwithstanding the provisions of Code Section 50-3-4.1, any agency which is eligible to receive appropriated state funds shall be required to display the Georgia state flag provided for in Code Section 50-3-1. No funds may be made available for expenditure by any agency which is not in compliance with the provisions of this subsection. The Office of Planning and Budget shall investigate any allegations of noncompliance with the provisions of this Code section. The Office of Planning and Budget and the Office of the State Treasurer shall enforce the provisions of this Code section. (Code 1981, § 45-12-83.1, enacted by Ga. L. 2001, p. 1, § 2; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” near the middle of the last sentence of subsection (b).

45-12-85. Examination and investigation of periodic work programs and requests for allotment of funds.

(a) The Governor shall examine the periodic work programs and shall make or cause to have made such further investigations by the Office of Planning and Budget, with such hearings before the Governor as he or she deems advisable, and shall direct changes in such provisions of the periodic work program as the Governor finds do not conform to the budget approved by the General Assembly.

(b) The Governor through the Office of Planning and Budget shall seek to effect economy, efficiency, decentralization of state government, and sound fiscal management in reviewing budget allotment requests and may make such changes to the budget allotment requests to meet these goals and objectives and which are consistent with and subject to

the method and provisions contained in the General Appropriations Act. Upon determination that the requested budget allotment conforms with the approved work program and meets the above-mentioned goals and objectives, the Governor shall execute his or her warrant on the treasury for the funds included in the approved budget allotment. Notwithstanding any authorization for expenditure included in an appropriations Act, all appropriations in excess of the approved budget allotments for the budget year, as determined by the Office of Planning and Budget, shall cease to be an obligation of the state. The Office of Planning and Budget shall notify the House Budget Office and the Senate Budget Office of any such action with appropriate supporting information. (Code 1933, § 40-417, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 10; Ga. L. 1994, p. 1865, § 3; Ga. L. 2008, p. VO1, § 1-17/HB 529.)

The 2008 amendment, effective January 28, 2008, substituted “the House Budget Office and the Senate Budget Office” for “the Office of Legislative Budget Analyst and the Budgetary Responsibility Oversight Committee” in the last sentence of subsection (b). See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1,

which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-12-86. Governor authorized to require state agencies to reserve specified appropriations for budget reductions and withhold a percentage of agency allotments to maintain spending within actual revenues.

(a) Except as otherwise provided in subsection (c) of this Code section, the Governor, during the first six months of a fiscal year period in which the current revenue estimate on which appropriations are based is expected to exceed actual revenues, is authorized to require state agencies to reserve such appropriations as specified by the Governor for budget reductions to be recommended to the General Assembly at its next regular session.

(b) Except as otherwise provided in subsection (c) of this Code section, the Governor, during any fiscal year by which the current revenue estimate on which appropriations are based is expected to exceed actual revenues, is authorized to withhold a percentage of agency allotment requests as necessary to maintain spending within actual revenues.

(c) During any fiscal year beginning on or after July 1, 2009, in which the current revenue estimate on which appropriations are based is expected to exceed actual revenues and an appropriation for homeowner tax relief grants pursuant to Chapter 89 of Title 36 has been made which does not comply with the limitations specified under

subsection (d) of Code Section 36-89-3, the Governor shall either require the state agency to which the appropriation was made to reserve such appropriations as specified by the Governor for budget reductions to be recommended to the General Assembly at its next regular session or withhold the agency allotment request for such appropriation as necessary to maintain spending within actual revenues. (Code 1933, § 40-418, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 11; Ga. L. 2005, p. 976, § 4/HB 509; Ga. L. 2009, p. 1, § 2/HB 143; Ga. L. 2009, p. 8, § 45/SB 46.)

The 2005 amendment, effective May 9, 2005, redesignated the former provisions of this Code section as subsection (a) and added subsection (b).

The 2009 amendments. — The first 2009 amendment, effective February 17, 2009, inserted “Except as otherwise provided in subsection (c) of this Code sec-

tion,” in the first sentence of subsections (a) and (b); substituted “estimated on” for “estimated or” near the middle of subsection (b); and added subsection (c). The second 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language in subsection (b).

45-12-88. Budget units to furnish information to Budgetary Responsibility Oversight Committee before instituting new programs.

Reserved. Repealed by Ga. L. 2008, p. VO1, § 2-3, effective January 28, 2008.

Editor’s notes. — This Code section was based on Code 1933, § 40-419.1, enacted by Ga. L. 1970, p. 637, § 1; Ga. L. 1993, p. 1914, § 12; Ga. L. 1994, p. 1865, § 4.

Ga. L. 2008, p. VO1, which repealed this

Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-12-92. Revenue collections to be paid to state treasury on monthly basis; effect of failure of budget unit to comply with Code section; user fee defined; reporting.

(a) All departments, agencies, and budget units charged with the duty of collecting taxes, fees, assessments, or other moneys, the collection of which is imposed by law, if required, shall pay all revenues collected by them into the state treasury on a monthly basis on or before the fifteenth day of each month for the immediately preceding month’s collections, according to such rules and regulations as may be prescribed by the Office of Planning and Budget. No allotment of funds shall be made to any budget unit which has failed to comply fully with this Code section.

(b)(1) As used in this subsection, the term “user fee” shall mean voluntary or mandatory payments made in exchange for a govern-

ment good or service provided specifically to the fee payer. A revenue source meets this definition if the authorization for the fee explicitly or implicitly ties the fee to the activities of a specific program, such as a licensing fee charged by a regulatory program. Fines, penalties, late fees, or similar punitive charges are not included in this definition.

(2) All departments, agencies, and budget units charged with the duty of collecting user fees, the collection of which is authorized by law or regulation, shall compile a separate annual report to be submitted to the Office of Planning and Budget showing:

(A) The statute or regulation authorizing a user fee;

(B) The user fee amount;

(C) The goods or services associated with the user fee and the estimated cost of such goods or services;

(D) The total amount collected from the user fee in the current fiscal year; and

(E) Whether the user fee has been retained by the department, agency, or budget unit or remitted to the state treasury.

(3) The report provided for in paragraph (2) of this subsection shall also contain any proposal that the budget unit may have to:

(A) Create a new fee, or change, reauthorize, or terminate an existing fee, which shall include a description of the associated service or product provided or the regulatory function performed; and

(B) Adjust an existing fee rate or amount. Each new or adjusted fee rate shall be accompanied by information justifying the proposed rate adjustment which may include:

(i) The relationship between the revenue to be raised by the fee or change in the fee and the cost or change in the cost of the service, product, or regulatory function supported by the fee, with costs construed as actual costs incurred;

(ii) The inflationary pressures that have arisen since the fee was last set;

(iii) The effect on budgetary adequacy if the fee is not increased;

(iv) The existence of comparable fees in other jurisdictions;

(v) Policies that might affect the acceptance or the viability of the fee amount;

(vi) Any proposal to designate, or redesignate, the fund into which revenue from a fee is to be deposited; and

(vii) Other relevant considerations.

(4) The Office of Planning and Budget shall compile and publish on the Open Georgia website, open.georgia.gov, a report showing for each department, agency, or other budget unit the data collected pursuant to this subsection. (Code 1933, § 40-423, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 2010, p. 112, § 1/HB 1284; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2010 amendment, effective May 20, 2010, designated the existing provisions as subsection (a), inserted “if required,” in the first sentence of present subsection (a), and added subsection (b).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraphs (b)(3)(A) and (b)(3)(B).

45-12-92.1. Fees which are not revenue measures; utilization of proceeds.

(a) The General Assembly finds and determines that certain fees imposed or authorized by law are not “revenue measures” within the meaning of Article VII, Section III, Paragraph II of the Constitution but only incidentally create revenue pursuant to the facilitation of another primary purpose.

(b) When any other provision of law imposes or authorizes the imposition of a fee and recites that such fee is subject to this Code section:

(1) The agency or other entity imposing and collecting the fee shall not pay the proceeds of the fee into the general fund of the state treasury but shall rather retain and expend the proceeds for purposes of defraying the costs of administering the program or activity with which the fee is associated; and

(2) If the amount of the fee is fixed by the agency or other entity pursuant to the law authorizing the fee, the fee shall be fixed in a reasonable amount such that the proceeds of the fee do not exceed the total direct and indirect costs of administering the program or activity with which the fee is associated. (Code 1981, § 45-12-92.1, enacted by Ga. L. 2010, p. 9, § 1-84.1/HB 1055.)

Effective date. — This Code section became effective May 12, 2010.

Cross references. — Provider Payment Agreement Act, T. 31, C. 8, A. 6.

45-12-93. Revenue shortfall reserve; reservation of surplus state funds; appropriation and release of funds; limit on amount of reserve.

(a) There shall be a reserve of state funds known as the “Revenue Shortfall Reserve.”

(b) The amount of all surplus in state funds existing as of the end of each fiscal year shall be reserved and added to the Revenue Shortfall Reserve. Funds in the Revenue Shortfall Reserve shall carry forward from fiscal year to fiscal year, without reverting to the general fund at the end of a fiscal year. The Revenue Shortfall Reserve shall be maintained, accumulated, appropriated, and otherwise disbursed only as provided in this Code section.

(c) For each existing fiscal year, the General Assembly may appropriate from the Revenue Shortfall Reserve an amount up to 1 percent of the net revenue collections of the preceding fiscal year for funding increased K-12 needs.

(d) The Governor may release for appropriation by the General Assembly a stated amount from funds in the Revenue Shortfall Reserve that are in excess of 4 percent of the net revenue of the preceding fiscal year.

(e) As of the end of each fiscal year, an amount shall be released from the Revenue Shortfall Reserve to the general fund to cover any deficit by which total expenditures and contractual obligations of state funds authorized by appropriation exceed net revenue and other amounts in state funds made available for appropriation.

(f) The combined Revenue Shortfall Reserve and the Midyear Adjustment Reserve existing on May 9, 2005, shall become the Revenue Shortfall Reserve provided for in this Code section.

(g) Any other provision of law notwithstanding, the General Assembly is authorized to appropriate \$7 million for State Fiscal Year 2005 from the Revenue Shortfall Reserve.

(h) The Revenue Shortfall Reserve shall not exceed 15 percent of the previous fiscal year's net revenue for any given fiscal year. (Ga. L. 1976, p. 420, § 1; Ga. L. 1982, p. 1288, §§ 1, 2; Ga. L. 1983, p. 1815, § 1; Ga. L. 1985, p. 252, § 5; Ga. L. 1986, p. 10, § 45; Ga. L. 1990, p. 8, § 45; Ga. L. 2000, p. 1505, § 1; Ga. L. 2001, p. 333, § 1; Ga. L. 2004, p. 1, § 1; Ga. L. 2005, p. 976, § 5/HB 509; Ga. L. 2010, p. 166, § 1/SB 421.)

The 2004 amendment, effective February 10, 2004, added subsections (e) and (f).

The 2005 amendment, effective May 9, 2005, rewrote this Code section.

The 2010 amendment, effective May

20, 2010, substituted "15 percent" for "10 percent" in the middle of subsection (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "May 9, 2005," was substituted for "the effective date of this subsection" in subsection (f).

45-12-95. Duty of Office of Planning and Budget to encourage state agencies to identify and implement cost-saving measures and to decentralize state government.

(a) It is the intent of the General Assembly to encourage state agencies to identify and implement cost-saving measures and to decentralize state government.

(b) It is the duty of the Office of Planning and Budget to assist state agencies in identifying and implementing measures that provide current services to the public at a reduced cost or improved services to the public at the same cost and that whenever possible, consistent with such objectives, those services be administered or provided from facilities that are decentralized.

(c) The Office of Planning and Budget is authorized to encourage state agencies to identify and propose cost-saving initiatives by establishing a system of financial incentives. A cost-saving initiative shall include a description of the proposed action to effect a cost reduction and the proposed use of the resulting savings. A system of financial incentives to encourage agencies to identify and propose cost-saving initiatives shall include the following provisions:

(1) Any agency that implements an approved cost-saving initiative shall be eligible to receive one-half of the resulting savings to be spent on other unfunded or underfunded needs of the agency's own choosing, provided that any such expenditures are consistent with the organization's approved strategic plan and do not create a continuing funding requirement in future fiscal years unless approved by the General Assembly in the next appropriations Act; and

(2) Where cost savings are one-time in nature, the implementing agency shall be eligible to receive one-half of the savings for one year. Where cost savings result from reductions in continuation spending, the implementing agency shall be eligible to receive one-half of the savings each year for a period of three years.

(d) The Office of Planning and Budget must review and approve all proposed cost-saving initiatives prior to their implementation for the implementing agency to be eligible for receipt of financial incentives. However, as part of this review, the Office of Planning and Budget must consult with a cross section of agencies and the House Budget Office and the Senate Budget Office.

(e) The Office of Planning and Budget shall maintain records on all approved cost-saving initiatives and, with the Governor's approval, shall reflect in the budget report submitted each year to the General Assembly the cost reductions in the affected agencies' budgets and the resulting financial incentives by agency.

(f) The Office of Planning and Budget shall issue rules and regulations as necessary to implement this program. (Code 1981, § 45-12-95, enacted by Ga. L. 1993, p. 1914, § 13; Ga. L. 1994, p. 97, § 45; Ga. L. 1994, p. 1865, § 5; Ga. L. 2008, p. VO1, § 1-18/HB 529.)

The 2008 amendment, effective January 28, 2008, substituted “House Budget Office and the Senate Budget Office” for “Office of Legislative Budget Analyst” in the last sentence of subsection (d). See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1,

which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

PART 2

REVIEW OF APPLICATIONS FOR FEDERAL ASSISTANCE AND STATE CONTRACTS

Subpart 1

Federal Assistance

45-12-110. Notification of intention to apply for federal assistance; adoption and promulgation of rules and regulations and forms by House Budget Office, Senate Budget Office, and director of Office of Planning and Budget.

(a) Any state department, board, bureau, commission, authority, or other state agency, except the Board of Regents of the University System of Georgia and its employees, intending to apply for any new program of federal assistance under any federal program shall notify the House Budget Office, the Senate Budget Office, and the director of the Office of Planning and Budget of its intention to apply for such federal assistance at least 30 days prior to filing the application for such assistance. Such notification shall include a summary description of the proposed federal assistance project, the amount of federal funds to be requested, the amount of state matching funds, if any, to be required in connection with obtaining federal assistance, and the period of time to be covered by the proposed federal assistance project.

(b) The House Budget Office, the Senate Budget Office, and the director of the Office of Planning and Budget, acting jointly or independently, are authorized and directed to devise and distribute such forms as may be necessary to carry out subsection (a) of this Code section and, in connection therewith, to adopt and promulgate such rules and regulations as may be necessary to ensure compliance with said subsection. (Ga. L. 1972, p. 411, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 2008, p. VO1, § 1-19/HB 529.)

The 2008 amendment, effective January 28, 2008, substituted “House Budget Office, the Senate Budget Office,” for “legislative budget analyst” in subsections (a) and (b). See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was

passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

Subpart 2

State Contracts

45-12-132. Contracts exempt from subpart.

The following contracts are exempt from this subpart:

(1) Contracts approved by the Department of Transportation, the State Board of Education, the State Board of the Technical College System of Georgia, or the Board of Regents of the University System of Georgia;

(2) Construction contracts of an authority entered into after competitive bid, including amendments thereto, and emergency contracts of an authority requiring immediate execution and performance for the protection of persons or property; and

(3) Contracts of employment. (Ga. L. 1972, p. 910, § 3; Ga. L. 1989, p. 603, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

The 2011 amendment, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for

“State Board of Technical and Adult Education” in paragraph (1).

PART 4

STATE PLANNING AND DEVELOPMENT

45-12-171. Office to be principal state agency for coordinating development, demographic data, statistical coordination, and federal programs; applications for and receipt of financial assistance.

(a) The Office of Planning and Budget shall be:

(1) The principal state agency for coordinating planning and programming for comprehensive development;

(2) The state agency responsible for preparing, maintaining, and furnishing official demographic data for the state; and

(3) The principal state agency for statistical coordination and standardization.

(b) The office may apply for and receive grants-in-aid, contributions, and any other forms of financial or other assistance from any source, public or private, for the purposes of this Code section and Code Sections 45-12-172 and 45-12-177.

(c) The office shall serve as the state agency for all federal programs which require state designation of a single clearing-house if federal or state law does not provide for another state agency or if the Governor does not designate another state agency by executive order. (Ga. L. 1970, p. 321, § 9; Ga. L. 1990, p. 8, § 45; Ga. L. 2008, p. 324, § 45/SB 455.)

The 2008 amendment, effective May 12, 2008, part of an Act to revise, modernize, and correct the Code, substituted “45-12-172 and 45-12-177” for “45-12-172, 45-12-177, and 45-12-178” at the end of subsection (b).

45-12-172. Office to review and comment on proposed development programs and serve as liaison with levels of government.

The Office of Planning and Budget shall be responsible, directly or in cooperation with other agencies, for planning the following activities:

(1) Reviewing and commenting upon the interrelationship with state planning of all applications for federal financial assistance by units of local government and local public agencies, regional commissions, and state agencies; and, where appropriate, reviewing and commenting to appropriate federal or state agencies that such proposed programs satisfy the requirements of or are not inconsistent with state law or with state and area forecasts and development programs or other state policies; and

(2) Serving in a liaison capacity with federal, state, and local levels of government. (Ga. L. 1970, p. 321, § 10; Ga. L. 1989, p. 1317, § 6.19; Ga. L. 2008, p. 181, § 22/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commissions” for “regional development centers” in paragraph (1).

45-12-173. Office to promote state development; duties of Governor; employment of personnel; furnishing of advice and assistance by other state officials.

(a) The Office of Planning and Budget shall perform the function of promoting the orderly growth and development of the state through the proper planning and programming of the affairs of state government. The Governor shall be ex officio director of state planning.

(b) The Governor, through the Office of Planning and Budget, shall make available such planning and programming service, technical

assistance, information, and advice as specified in this Code section and Code Sections 45-12-174 through 45-12-176 to departments, agencies, and institutions of state government, to the General Assembly, and to local and joint units of government and other public bodies as may be appropriate to achieve the purposes of this Code section and Code Sections 45-12-174 through 45-12-176.

(c) The Governor, through the Office of Planning and Budget, shall encourage comprehensive and coordinated planning and programming of the affairs of the state government. He may inquire into the methods of planning and program development in the conduct of the affairs of state government; he may prescribe for adequate systems of records for planning and programming purposes; and he may prescribe the institution and uses of standards for effective planning and programming.

(d) The Governor shall prepare and submit to the General Assembly a development program for the consideration and review of the General Assembly. A program budget report shall satisfy this requirement. The development program shall be submitted within five days after the organization of the General Assembly for review with the budget document.

(e) The director of the Office of Planning and Budget is authorized and directed to employ fully qualified professional, technical, and clerical personnel as required to carry out the duties prescribed in this Code section and Code Sections 45-12-174 through 45-12-176.

(f) The Attorney General, the state auditor, and such other state officials as shall be called upon shall render such advice and assistance and furnish such information to the Office of Planning and Budget as may be requested and needed. (Ga. L. 1967, p. 252, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 2005, p. 976, § 6/HB 509.)

The 2005 amendment, effective May 9, 2005, added the second sentence in subsection (d).

45-12-175. Preparation of long-range development plans by office; designation of planning officer or representative by departments, agencies, or institutions.

(a) The Governor, through the Office of Planning and Budget, shall have in continuous process and revision a strategic plan for the state as a whole. This plan shall be updated at least on an annual basis and shall cover a minimum period of time as determined by the Office of Planning and Budget, but not less than five years. It shall have as its primary goal the improved fiscal responsibility and responsiveness of state government and the effective and efficient delivery of services throughout the geographic area of the state with an emphasis on

decentralizing state government. The goals and strategies contained in this state strategic plan shall be reflected by the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government, as respectively applies, in the development of their own strategic plans which specifically deal with their respective future directions and organizational missions. Each strategic plan developed by each department, board, bureau, commission, institution, authority, and other agency of state government shall contain a description of its future direction; a statement of its organizational mission; a description of the current and anticipated future needs being addressed by its preferred future direction and organizational mission; a description of planned actions designed to address these needs; a description of the goals for the program or services to be improved; a course of action for achieving the planned improvements, including an implementation timetable; a description of the evaluation system to be used to determine if the goals are being attained; an estimated annual cost for each planned improvement of a program or service; all efforts to decentralize its administrative and operational functions; and all other items as the Office of Planning and Budget may deem necessary. Each department, board, bureau, commission, institution, authority, and other agency of state government shall submit its own strategic plan to the Office of Planning and Budget as supporting information for the budget estimates required under Code Section 45-12-78.

(b) The Office of Planning and Budget shall cause to be prepared and coordinate the development of strategic plans by departments, boards, bureaus, commissions, institutions, authorities, and other agencies to ensure that the state-wide directions are met. The Office of Planning and Budget shall:

(1) Ensure that the focus of the various plans do not conflict with the general state goals;

(2) Offer assistance to the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government in the design and execution of their programs and be the coordinating agency for the separate department or agency proposals; and

(3) Phase in implementation by the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government.

(c) To assist in the development of plans and programs of state government, the Governor, through the Office of Planning and Budget, may request, as appropriate, that each department, agency, and institution of state government designate, from among its employees and

officers, a planning officer or representative who shall be responsible for the planning and coordination of the activities and responsibilities of the department, agency, or institution. Such planning officer or representative shall coordinate program plans prepared for each area of program responsibility within his or her agency of the state government. (Ga. L. 1967, p. 252, § 3; Ga. L. 1993, p. 1914, § 14; Ga. L. 1994, p. 1865, § 6; Ga. L. 2008, p. VO1, § 2-4/HB 529.)

The 2008 amendment, effective January 28, 2008, in paragraph (b)(2), added “and” at the end; in paragraph (b)(3), deleted “By September 1 of 1993 and each year thereafter until all departments, boards, bureaus, commissions, institutions, authorities, and other agencies have initiated strategic planning, the Office of Planning and Budget shall notify the Budgetary Responsibility Oversight Committee as to which departments, boards, bureaus, commissions, institutions, authorities, and other agencies will initiate strategic planning in the coming year; and” from the end; and deleted former

paragraph (b)(4), which read: “Present such strategic plans, in cooperation with the affected department, board, bureau, commission, institution, authority, or other agency, to the Budgetary Responsibility Oversight Committee.” See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-12-177. Office to review and establish state goals and policies; Governor to prepare annual policy document reflecting state strategic plan.

(a) The Office of Planning and Budget shall have the power and duty to review and consider immediate and long-range state agency proposals, goals, and directions and to establish state-wide goals and policies.

(b) The Governor, through the Office of Planning and Budget, shall prepare an annual policy document to reflect the state strategic plan and address state-wide goals, objectives, and opportunities. A program budget report shall satisfy this requirement. Such policy document shall be transmitted to the General Assembly at the beginning of each legislative session beginning with the 2006 session. (Ga. L. 1970, p. 321, § 4; Ga. L. 1993, p. 1914, § 15; Ga. L. 2005, p. 976, § 7/HB 509.)

The 2005 amendment, effective May 9, 2005, in subsection (b), inserted the second sentence and substituted “2006” for “1994”.

45-12-178. Ongoing review by Governor of all programs and functions in state government.

Repealed by Ga. L. 2008, p. VO1, § 2-5, effective January 28, 2008.

Editor’s notes. — This Code section was based on Ga. L. 1970, p. 321, § 6; Ga. L. 1993, p. 1914, §§ 16, 17; Ga. L. 1994, p. 1865, § 7; Ga. L. 1995, p. 10, § 45; Ga. L.

1995, p. 923, § 2; Ga. L. 1997, p. 1535, §§ 1, 2; Ga. L. 1998, p. 128, § 45.

Ga. L. 2008, p. VO1, which repealed this Code section, was passed by the General Assembly as HB 529 at the 2007 regular

session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

ARTICLE 6

PLANNING AND DEVELOPMENT

45-12-206. Cooperation of state agencies, counties, municipalities, and other political subdivisions with council.

All state agencies and all counties, municipalities, or other political subdivisions of the state, regional commissions, and other public agencies or public authorities shall have the power and authority to take all actions which may be necessary or appropriate to respond to inquiries and requests from the council, to cooperate with the council in carrying out its duties, and otherwise to take any action which the Governor or the council may direct or require in carrying out their duties under this article. (Code 1981, § 45-12-206, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 2008, p. 181, § 22/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commissions” for “regional development centers” in this Code section.

CHAPTER 13

SECRETARY OF STATE

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JUDICIAL DECISIONS

Standing of Secretary of State to object to request to view election records under Open Records Act. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and

45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. *Smith v. DeKalb County*, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. 2008).

45-13-22. Distribution of Georgia Laws and journals of House and Senate; pricing.

(a) It shall be the duty of the Secretary of State to distribute the Acts and resolutions of the General Assembly of Georgia. The Secretary of State shall notify the legislative counsel of the distribution requirements of electronic version and hard-bound volumes of Georgia Laws. Hard-bound volumes shall be distributed as provided in this Code section. The Secretary of State shall make distribution of the electronic version and bound volumes of the journals of the House and Senate. The Secretary of State shall notify the Clerk of the House and the

Secretary of the Senate of the numbers of journals needed for distribution. Distribution shall be as provided in this Code section.

(b) Volumes distributed to members of the General Assembly, to libraries, to institutions of learning, or to agencies outside the State of Georgia shall become the property of the recipient. All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or to public employees within the state, other than members of the General Assembly, shall be the property of the appropriate public officer or employee during his term of office or employment and shall be turned over to his or her successor, and the Secretary of State shall take and retain a receipt from each such public officer or employee acknowledging this fact. The Secretary of State shall at all times use the most economical method of shipment consistent with the safety and security of the volumes. The Secretary of State shall make the distributions provided for in this Code section. Additional copies of the hard-bound volumes of the Georgia Laws and of the House and Senate Journals may be sold by the Secretary of State to persons desiring to purchase the same. The prices at which such volumes are to be sold shall be determined by the Secretary of State. In determining such prices the Secretary of State shall take into account the approximate cost to the state of producing such volumes and the usual and customary cost of comparable publications. Receipts from such sales shall be deposited by the Secretary of State into the general fund of the state treasury.

(c) Each of the officers, offices, and other entities listed in this subsection shall be authorized to order up to the indicated numbers of sets of the Georgia Laws from each legislative session. The numbers of sets authorized for each such officer, office, and entity shall be as follows:

- (1) Law Department — 33 sets, which number may be increased by written order of the Attorney General;
- (2) Each state agency or department — one set;
- (3) Library of Congress — one set;
- (4) University of Georgia — two sets;
- (5) Supreme Court of Georgia — 12 sets, which number may be increased by written order of the Chief Justice;
- (6) Court of Appeals of Georgia — 13 sets, which number may be increased by written order of the Chief Judge;
- (7) Administrative Office of the Courts — one set;
- (8) Each superior court judge — one set;

- (8.1) Each clerk of superior court — one set;
 - (9) Each district attorney — one set;
 - (10) Each judge of probate court — two sets, of which one set may be retained for the judge's own use and one set may be issued to the county attorney;
 - (11) Each state court — one set;
 - (12) Each magistrate court — one set;
 - (13) United States Supreme Court — one set;
 - (14) United States Court of Appeals for the Eleventh Circuit — one set;
 - (15) United States District Courts for the State of Georgia — six sets;
 - (16) Clerk of the House of Representatives — five sets;
 - (17) Each member of the General Assembly — one set;
 - (18) House Judiciary Committee — one set;
 - (19) House Majority Leader — one set;
 - (20) House Minority Leader — one set;
 - (21) House Budget Office and Senate Budget Office — one set each;
 - (22) Legislative counsel — 15 sets, which number may be increased by written order of the legislative counsel;
 - (23) Legislative fiscal officer — one set;
 - (24) President of the Senate — one set;
 - (25) President pro tempore of the Senate — one set;
 - (26) Secretary of the Senate — three sets;
 - (27) Speaker of the House — one set; and
 - (28) Senate Judiciary Committee — one set.
- (d) Each of the following officers, offices, and other entities shall be authorized to order up to the indicated numbers of the Georgia Senate and House Journals from each legislative session; provided, however, that such officers, offices, and entities shall pay the Secretary of State the cost of acquisition of such volumes:
- (1) Law Department — four sets, which number may be increased by written order of the Attorney General;
 - (2) Each state agency or department — one set;

- (3) State Archives — one set;
- (4) Georgia Historical Society — two sets;
- (5) Each foreign government and each state participating in an exchange and depository program — one set;
- (6) Library of Congress — two sets;
- (7) Augusta College — one set;
- (8) Georgia Institute of Technology — one set;
- (9) Georgia State University — one set;
- (10) University of Georgia — seven sets;
- (11) Department of Administrative Services — one set;
- (12) Department of Human Services — one set;
- (13) Supreme Court of Georgia — as requested in writing by the Chief Justice;
- (14) Court of Appeals of Georgia — as requested in writing by the Chief Judge;
- (15) Each judge of probate court — one set;
- (16) Legislative counsel — five sets;
- (17) Legislative fiscal officer — nine sets;
- (18) Each member of the House of Representatives — one set;
- (19) Speaker of the House — one set;
- (20) Clerk of the House of Representatives — three sets;
- (21) House Judiciary Committee — one set;
- (22) House Majority Leader — one set;
- (23) House Minority Leader — one set;
- (24) Each member of the Senate — one set;
- (25) President of the Senate — one set;
- (26) President pro tempore of the Senate — one set;
- (27) Secretary of the Senate — three sets; and
- (28) Senate Judiciary Committee — one set.

(e) In the case of newly created courts or judgeships, and in the case of other state departments, agencies, and entities needing session laws or journals or both, requests for session laws and journals may be filled in whole or in part as the Secretary of State deems appropriate; and the

Secretary of State may add names to or delete names from the distribution lists for the session laws and journals as he or she deems appropriate, except that the Secretary of State may not delete those authorized to order sets under subsection (c) of this Code section.

(f) Each officer, office, or other entity authorized to order Georgia Laws or Georgia Senate and House Journals pursuant to subsection (c) or (d) of this Code section shall do so by placing such order in writing to the Secretary of State prior to the end of each session of the General Assembly. A written order from an officer, office, or other entity shall remain in effect for two years. The Secretary of State shall not provide Georgia Laws or House and Senate Journals to any such officer, office, or other entity without a written order. The Secretary of State has no obligation to provide Georgia Laws or House or Senate Journals to any such officer, office, or other entity unless a written order has been placed in accordance with the time frame specified in this subsection.

(g) The Secretary of State shall reserve five copies each of the session laws and of the journals of the House and Senate for three years after their receipt. After three years he or she shall hold in reserve one copy of each of the laws and journals. Copies of the laws and journals in excess of the required reserve and not needed for purposes of distribution or exchange may be sold or otherwise disposed of by the Secretary of State.

(h) The Secretary of State shall act as the exchange officer of this state for the purpose of a regular exchange between this state and other states and foreign governments of the session laws and the journals of the House and Senate. To the extent that the Secretary of State deems such exchanges appropriate, if requested by the Attorney General to make such exchanges, the Secretary of State may distribute one set of the session laws and the journals of the House and Senate to each participating state and foreign government. (Ga. L. 1943, p. 406, § 1; Ga. L. 1960, p. 1098, § 1; Ga. L. 1980, p. 88, § 1; Ga. L. 1988, p. 7, § 2; Ga. L. 1989, p. 1129, § 7; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 782, § 2; Ga. L. 1992, p. 2431, §§ 1, 2; Ga. L. 2008, p. VO1, § 1-20/HB 529; Ga. L. 2008, p. 267, §§ 4, 5, 6/SB 482; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 838, § 2/SB 388.)

The 2008 amendments. — The first 2008 amendment, effective May 6, 2008, deleted “(including the State Law Library)” following “Law Department” at the beginning of paragraphs (c)(1) and (d)(1); and deleted the former last sentence of subsection (h), which read: “The session laws and journals of the House and Senate received in exchange from other states

and foreign governments shall become a part of the collection of the State Law Library.” The second 2008 amendment, effective January 28, 2008, substituted “House Budget Office and Senate Budget Office — one set each;” for “Legislative budget analyst — one set;” in paragraph (c)(25). See the editor’s note.

The 2009 amendment, effective July

1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraph (d)(12).

The 2010 amendment, effective June 3, 2010, in subsection (a), substituted “distribution requirements of electronic version and hard-bound volumes of Georgia Laws” for “numbers of soft-bound and hard-bound Georgia Laws needed for distribution” in the second sentence, deleted “and soft-bound” preceding “volumes” in the third sentence, and inserted “electronic version and” in the fourth sentence; in subsection (b), inserted “or her” in the second sentence, deleted “and soft-bound volumes” preceding “of the Georgia Laws” in the fifth sentence, substituted “Secretary of State” for “Legislative Counsel for the Georgia Laws, by the Secretary of the Senate for the Senate Journals, and by the Clerk of the House of Representatives for the House Journals” in the sixth sentence, and substituted “the Secretary of State” for “such officers” in the seventh sentence; rewrote subsection (c); added the proviso at the end of the introductory language of subsection (d); in subsection (e), inserted “or she” near the middle, and

substituted “subsection (c)” for “subsections (c) and (d)” near the end; in subsection (f), substituted “subsection (c)” for “subsections (c) and (d)” in the first sentence, and substituted “for two years” for “until changed by a subsequent written order” at the end of the second sentence; in subsection (g), in the first sentence, substituted “five copies” for “30 copies” and, in the second sentence, inserted “or she” and substituted “one copy” for “15 copies”; and substituted “may distribute” for “shall distribute” in the last sentence of subsection (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, the paragraph (8.1) designation was added in subsection (c) and “subsection (c) or (d)” was substituted for “subsection (c)” in the first sentence of subsection (f).

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

45-13-24. Duty to provide Acts requiring referendums to local election officials.

(a) Within one calendar week after any local Act or general Act of local application which requires a special election is approved by the Governor or becomes law without such approval, it shall be the duty of the Secretary of State to provide a copy of the Act, with a certificate showing the date it became law, to the election superintendent and the governing authority of each county or municipality in which it has application.

(b) Within 60 calendar days after any local Act or general Act of local application which requires a local referendum is approved by the Governor or becomes law without such approval, it shall be the duty of the Secretary of State to provide a copy of the Act, with a certificate showing the date it became law, to the election superintendent and the governing authority of each county or municipality in which it has application. (Ga. L. 1945, p. 128, § 1; Ga. L. 1986, p. 1608, § 2; Ga. L. 1990, p. 782, § 4; Ga. L. 2010, p. 838, § 3/SB 388.)

The 2010 amendment, effective June 3, 2010, designated the existing provisions as subsection (a); in subsection (a),

deleted “local referendum or a” preceding “special election”, substituted “such approval” for “his approval”, and substituted

“provide” for “mail”; and added subsection (b).

45-13-25. Employment of assistants to discharge functions imposed by Chapter 5 of Title 10, the “Georgia Uniform Securities Act of 2008.”

The Secretary of State may employ such assistants as may be necessary to discharge the functions imposed on him relative to Chapter 5 of Title 10, the “Georgia Uniform Securities Act of 2008,” provided that an appropriation therefor shall have been made in accordance with law. (Ga. L. 1931, p. 7, § 88; Code 1933, § 40-603; Ga. L. 2008, p. 381, § 10/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted “‘Georgia Uniform Securities Act of 2008,’” for “‘Georgia Securities Act of 1973,’” in this Code section.

45-13-27. Official directory of state and county officials and officers.

It shall be the duty of the Secretary of State to publish in print or electronically in each odd-numbered year an official directory of state and county officials and officers. Such directory shall also contain the names of the members of the Georgia delegation to the Congress of the United States. The directory shall contain the name, political party affiliation, independent status, or nonpartisan status of each person elected to a state or county office or to the Congress of the United States from this state. The directory shall contain such additional information as the Secretary of State shall prescribe in order to make the directory a useful and convenient reference work. (Code 1981, § 45-13-27, enacted by Ga. L. 1987, p. 432, § 1; Ga. L. 1997, p. 455, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

ARTICLE 3

DIVISION OF ARCHIVES AND HISTORY

45-13-41. Objectives and purposes generally.

The objects and purposes of the Georgia Archives shall be to:

(1) Ensure the retention and preservation of the records of any state or local agency with historical and research value by providing for the application of modern and efficient methods to the creation,

utilization, maintenance, retention, preservation, and disposal of records;

(2) Provide an archival and records' depository in which to assemble and maintain the official archives and other inactive records of the state not in current and common use;

(3) Collect from the files of old newspapers, court records, church records, private collections, and other sources data of all kinds bearing upon the history of the state;

(4) Secure from private individuals, either by loan or gift, rare volumes, manuscripts, documents, and pamphlets for the use of this division;

(5) Obtain, either by loan or gift, historical trophies, souvenirs, and relics;

(6) Classify, edit, annotate, and publish in print or electronically from time to time such records as may be deemed expedient and proper, including messages of Governors, executive orders, state papers, and military rosters of the Revolutionary, Indian, Mexican, Civil, and European wars;

(7) Diffuse knowledge in regard to the state's history;

(8) Prepare biennially an official register giving the latest information of an official character in regard to the state, including a full list of state officers, legislators, judges, district attorneys, members of Congress, county officials, etc., together with other pertinent items of information;

(9) Encourage the proper marking of battlefields, houses, and other places celebrated in the history of the state;

(10) Encourage the study of Georgia history in the public schools;

(11) Assist in the observance of patriotic occasions;

(12) Plan and coordinate celebrations and observations of events and anniversaries having historic or special significance to this state;

(13) Stimulate historical research, especially in the prosecution of local histories;

(14) Foster sentiment looking to the better protection, classification, and arrangement of records in the various courthouses of the state;

(15) Collect biographical information in regard to all public officials and to keep same on file, in a classified arrangement, for convenient reference by investigators; and

(16) Encourage the study of historical documents including but not limited to those which reflect our National Motto, the Declaration of Independence, the Ten Commandments, the Constitution of the United States, and such other nationally recognized documents which contributed to the history of the State of Georgia. (Ga. L. 1918, p. 137, § 1; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-802; Ga. L. 1969, p. 989, § 1; Ga. L. 1980, p. 485, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 2002, p. 532, § 10; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (6).

45-13-45. Powers of Secretary of State with respect to management of division generally; designation and establishment of branch depositories.

(a) The Secretary of State is authorized to adopt rules for the government of the division; to appoint a director and to provide for the selection or appointment of such other officials or employees as may be authorized; to provide for the print or electronic publication, under the supervision of the director, of historical material pertaining to the state; to control and expend such appropriations as may be made for the maintenance of the Division of Archives and History; and to do such other acts and things as may be necessary to carry out the true intent and purpose of this article.

(b) The Secretary of State is authorized to designate and establish, as a branch depository of the Division of Archives and History, facilities occupied by any nonprofit historical association organized for the purpose of collecting, preserving, and diffusing information relating to the history of Georgia, which association has been in continuous existence for a period of at least 100 years; provided, however, that no such designation and establishment of a branch depository shall be made unless the Secretary of State shall obtain the prior written approval of the historical association involved and unless the funds are made available to the Secretary of State for the specific purpose of supporting such branch depository. The Secretary of State may expend such funds as are necessary or desirable for the maintenance and operation of any such facilities and for the preservation and safeguarding of the contents thereof and for the employment of such persons as are necessary or desirable for the accomplishment of same. The Secretary of State may enter into such contractual arrangements as he or she deems to be in the public interest for acquiring the title to or loan of any historical records for use in such branch depository or any other depository of the Division of Archives and History. Such branch depository shall be under the immediate management and control of the

Secretary of State. The Secretary of State may abolish such branch depository at any time.

(c) The Secretary of State is authorized to designate and establish, as a branch depository of the Division of Archives and History for the storage and retention of permanent records, temporary records, or security backup media in any format, facilities occupied by any government agency; provided, however, that no such designation and establishment of a branch depository shall be made unless the Secretary of State shall obtain the prior written approval of the government agency involved. Records in the custody of such depositories shall be subject to the same laws, standards, and policies as any records in the physical custody of the Division of Archives and History including, but not limited to, Code Section 50-18-98. The Secretary of State may expend such funds as are necessary or desirable for the maintenance and operation of any such facilities; for the preservation and safeguarding of the contents thereof; and for the employment of such persons as are necessary and desirable for the accomplishment of such maintenance, operation, preservation, and safeguarding. Such depositories may be operated on a cost recovery basis. The Secretary of State may enter into such contractual arrangements as he or she deems to be in the public interest for creating and operating such branch depositories. The records or digital content maintained in such branch depositories shall be under the immediate management and control of the Division of Archives and History. The Secretary of State may abolish such branch depository at any time. (Ga. L. 1918, p. 137, § 2; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-804; Ga. L. 1965, p. 623, § 1; Ga. L. 1966, p. 461, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 532, § 14; Ga. L. 2007, p. 83, § 1/SB 210; Ga. L. 2010, p. 838, § 11/SB 388.)

The 2007 amendment, effective July 1, 2007, added subsection (c). 3, 2010, inserted "print or electronic" near the middle of subsection (a).

The 2010 amendment, effective June

45-13-46. Surrender of materials to division for preservation; preparation of certified copies; ownership, operation, and management of electronic archival records; exemption for certain records under certain conditions; "constitutional officer" defined.

(a) Any state, county, or other official is authorized, in his or her discretion, to turn over for permanent preservation in the Division of Archives and History any official books, records, documents, original papers, manuscript files, newspaper files, portraits, and printed volumes not in current use in his or her office. Any record created or received by a state agency, constitutional officer, or Speaker of the House of Representatives in the performance of a public duty or paid for by public funds and certified by the director of the Division of Archives

and History as necessary to document the history, organization, functions, policies, decisions, and procedures of the agency or office shall be placed for permanent preservation in the Division of Archives and History when no longer in current use by the agency or officer. The Secretary of State shall provide for the preservation of said materials; and, when so surrendered, copies thereof shall be made and certified by the director upon the application of any person interested, which certification shall have the same force and effect as if made by the officers originally in custody of them and for which the same fees shall be charged.

(b) The Division of Archives and History shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by the Division of Archives and History.

(c) Personal and official records and papers of the Lieutenant Governor and the Speaker of the House of Representatives shall be exempt from the provisions of subsection (a) of this Code section when such records and papers are deposited in a repository that meets the minimum archival and public access standards promulgated by the Division of Archives and History.

(d) As used in this Code section, the term “constitutional officer” means any officer enumerated in Article V, Section I, Paragraph I; Article V, Section I, Paragraph III; or Article V, Section III, Paragraph I of the Constitution of the State of Georgia. (Ga. L. 1918, p. 137, § 6; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-805; Ga. L. 2002, p. 532, § 15; Ga. L. 2004, p. 591, § 2; Ga. L. 2007, p. 83, § 2/SB 210.)

The 2004 amendment, effective July 1, 2004, designated the existing provisions as subsection (a); added the second sentence in subsection (a); and added subsections (b) and (c).

The 2007 amendment, effective July 1, 2007, added present subsection (b); and redesignated former subsections (b) and (c) as present subsections (c) and (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, in subsection (a), a comma was deleted following “public funds”; “director” was substituted for “Director”, and a comma was deleted following “or office”; and, in subsection (b), “of subsection (a)” was substituted for “of this subsection (a)”.

45-13-51. Study of historical documents; public displays of the Foundations of American Law and Government.

(a) The General Assembly finds and determines:

(1) The General Assembly has directed the Division of Archives and History of the State of Georgia to encourage the study of historical documents;

(2) There is a need to educate and inform the public about the history and background of American law;

(3) The public buildings of this state are an ideal forum in which to display educational and informational material about the history and background of American law; and

(4) A basic knowledge of American constitutional history is important to the formation of civic virtue in our society.

(b) The state and each municipality and political subdivision of this state shall be authorized to post the Foundations of American Law and Government display, as described in subsection (c) of this Code section, in a visible, public location in the public facilities of the state and such municipality or political subdivision.

(c) The Foundations of American Law and Government display shall include:

(1) The Mayflower Compact, 1620;

(2) The Ten Commandments as extracted from Exodus Chapter 20;

(3) The Declaration of Independence;

(4) Magna Carta;

(5) "The Star-Spangled Banner" by Francis Scott Key;

(6) The national motto;

(7) The Preamble to the Georgia Constitution;

(8) The Bill of Rights of the United States Constitution; and

(9) The description on the image of Lady Justice.

(d) Public displays of the Foundations of American Law and Government shall contain the documents set forth in paragraphs (1) through (9) of subsection (c) of this Code section together with a context for acknowledging formative, historically significant documents in America's heritage as follows:

FOUNDATIONS OF AMERICAN LAW AND GOVERNMENT DISPLAY

The Foundations of American Law and Government display contains documents that played a significant role in the foundation of our system of law and government. The display contains (1) the Mayflower Compact; (2) the Ten Commandments; (3) the Declaration of Independence; (4) Magna Carta; (5) "The Star-Spangled Banner"; (6) the national motto of the United States of America; (7) the Preamble to the Georgia Constitution; (8) the Bill of Rights of the United States Constitution; and (9) a picture of Lady Justice.

The Mayflower Compact

The Mayflower Compact was penned by William Bradford on November 11, 1620, on the *Mayflower* before the Pilgrims made landfall at Plymouth, Massachusetts. The Compact was the first written constitution in the New World. William Bradford described the reasoning behind the Compact when he stated in the Compact, "This day, before we came to harbour, observing some not well affected to unity and concord, but gave some appearance of faction, it was thought good there should be an association and agreement, that we should combine together in one body, and to submit to such government and governors as we should by common consent agree to make and choose, and set our hands to this that follows, word for word."

The Ten Commandments

The Ten Commandments have profoundly influenced the formation of Western legal thought and the formation of our country. That influence is clearly seen in the Declaration of Independence, which declared that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The Ten Commandments provide the moral background of the Declaration of Independence and the foundation of our legal tradition.

The Declaration of Independence

Perhaps the single most important document in American history, the Declaration of Independence was, as Abraham Lincoln stated, the "frame" into which the Framers placed the Constitution. The Declaration's fundamental premise is that one's right to "Life, Liberty and the pursuit of Happiness" is not a gift of government. Government is not a giver of rights, but a protector of God-given rights. Moreover, government is a creation of "the governed" and derives all its power from the consent of its people. As the Preamble to the United States Constitution states, "We the People" are the government.

Magna Carta

In 1215, King John of England consented to the demands of his barons and agreed for Magna Carta to be publicly read throughout the land. By this act he bound himself and "our heirs, in all things and all places for ever" to grant to the people of his kingdom the rights pronounced in Magna Carta. By signing Magna Carta, King John brought himself and England's future rulers within the rule of law. The rule of law places a restraint on the exercise of arbitrary government power, and it places all people and civil government under law. The American patriots, therefore, waged war against England to preserve liberties originating in thirteenth century England. A distinction,

however, is noted between Magna Carta and the American concept of liberty. While Magna Carta is a guarantee from a king that he will follow the law, the Constitution of the United States is the establishment of a government consisting of, and created for, "We the People."

"The Star-Spangled Banner"

Guarding the entrance to Baltimore harbor via the Patapsco River during the War of 1812, Fort McHenry faced almost certain attack by British forces. Major George Armistead, the stronghold's commander, was ready to defend the fort, but he wanted a flag that would identify his position, one whose size would be visible to the enemy from a distance. The flag that was made for the fort was 30 feet by 42 feet. Anxiously awaiting news of the battle's outcome was a Washington, D.C., lawyer named Francis Scott Key. Key had visited the enemy's fleet to secure the release of a Maryland doctor who had been abducted by the British after they left Washington. The lawyer had been successful in his mission, but he could not escort the doctor home until the attack ended. So he waited on a flag-of-truce sloop anchored eight miles downstream from Fort McHenry.

During the night, there had been only occasional sounds of the fort's guns returning fire. At dawn, the British bombardment tapered off. Had the fort been captured? Placing a telescope to his eye, Key trained it on the fort's flagpole. There he saw the large garrison flag catch the morning breeze. It had been raised as a gesture of defiance, replacing the wet storm flag that had flown through the night. Thrilled by the sight of the flag and the knowledge that the fort had not fallen, Key took a letter from his pocket and began to write some verses on the back of it. Later, after the British fleet had withdrawn, Key checked into a Baltimore hotel and completed his poem on the defense of Fort McHenry. He then sent it to a printer for duplication on handbills, and within a few days the poem was put to the music of an old English song. Both the new song and the flag became known as "The Star-Spangled Banner" and became a rallying cry for the American Patriots during the rest of the war.

The National Motto

The motto was derived from the line "And this be our motto, 'In God is our trust'" in the U.S. national anthem, "The Star-Spangled Banner." The phrase first appeared on U.S. coins in 1864 and became obligatory on all U.S. currency in 1955. In accordance with Public Law No. 851 passed at the Second Session of the 84th Congress of the United States, July 30, 1956, the national motto of the United States became "In God We Trust."

The Preamble to the Georgia Constitution

The Preamble to the Georgia Constitution celebrates the ideas of free government, justice, peace, happiness, and liberty. Government is a

creation of “the governed” and derives all its power from the consent of its people. The people, therefore, desiring a civilized society, created and ordained the Constitution of the State of Georgia.

The Bill of Rights of the United States Constitution

During the debates on the adoption of the U.S. Constitution, its opponents repeatedly charged that the Constitution as drafted would open the way to tyranny by the central government. Fresh in their minds was the memory of the British violation of civil rights before and during the Revolution. They demanded a “bill of rights” that would spell out the immunities of individual citizens. Several state conventions in their formal ratification of the Constitution asked for such amendments; others ratified the Constitution with the understanding that the amendments would be offered. The Bill of Rights is still a vital and powerful force in American government, shaping our laws and serving as a check on the exercise of government power.

Lady Justice

Lady Justice has become a symbol of the fair and equal administration of the law, without corruption, avarice, prejudice, or favor. The blindfold represents a system of justice that is blinded to all prejudices or favor. The scales represent justice that is administered fairly and the sword represents justice that is authoritative. Lady Justice is a symbol of the American system of justice and the ideals it embodies.

(e) All documents which are included in the Foundations of American Law and Government displays shall be posted on paper not less than 11 x 14 inches in dimension and shall be framed in identically styled frames. No one document shall be displayed more prominently than another.

(f) In no event shall any state funding be used for a display of the Foundations of American Law and Government. (Code 1981, § 45-13-51, enacted by Ga. L. 2006, p. 258, § 1/HB 941; Ga. L. 2012, p. 699, § 1/HB 766.)

Effective date. — This Code section became effective April 20, 2006.

The 2012 amendment, effective July 1, 2012, substituted “public buildings” for “public courthouses and judicial facilities” in paragraph (a)(3); substituted a period for a semicolon at the end of paragraph (a)(4); and, in subsection (b), substituted

“The state and each” for “Each” at the beginning, and substituted “public facilities of the state and” for “judicial facilities of” near the end.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 273 (2006).

ARTICLE 3B

COMMISSION ON GEORGIA HISTORY AND HISTORICAL
TOURISM**45-13-58. Purpose; membership; staff support; meetings; funding; powers and authority; termination.**

Repealed by Ga. L. 2001, p. 1043, § 2, effective December 15, 2002.

Editor's notes. — This article was based on Ga. L. 2001, p. 1043, § 2.

ARTICLE 4

GEORGIA CAPITOL MUSEUM

PART 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2006, p. 149, § 1 designated existing Code Sections 45-13-60 through 45-13-62 as Part 1 of Article 4 of Chapter 13 of this title.

45-13-60 through 45-13-62.

Reserved. Repealed by Ga. L. 2011, p. 617, § 2/SB 190, effective July 1, 2011.

Editor's notes. — This part consisted of Code Sections 45-13-60 through 45-13-62, relating to the Georgia Capitol Museum, and was based on Ga. L. 1955, p. 350, §§ 1-3; Ga. L. 1997, p. 455, § 3.

PART 2

CAPITOL ARTS STANDARDS COMMISSION

Effective date. — This part became effective April 18, 2006.

Law reviews. — For article, "The Protection of Visual Artists Through Consignment of Art Statutes," see 18 J. Intell. Prop. L. 551 (2011).

45-13-70. Creation of commission; membership; appointment; staffing.

(a) There is created the Capitol Art Standards Commission, which is assigned to the Office of the Secretary of State for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) The Capitol Art Standards Commission shall be composed of 16 members. Three members shall be appointed by the Governor, one of whom shall be designated as chairperson. Three members shall be appointed by the Senate Committee on Assignments and three mem-

bers shall be appointed by the Speaker of the House of Representatives. One member each shall be appointed by the Georgia Historical Society, the Georgia Council for the Humanities, and the Georgia Council for the Arts. One member each shall be appointed by the Board of Regents of the University System of Georgia and the Georgia Foundation for Independent Colleges, each of whom shall be proficient in the history of the State of Georgia. Each of the appointed members shall serve two-year terms of office and shall be eligible to succeed themselves. In addition, the director of the Georgia Capitol Museum or his or her designee and the Secretary of State or his or her designee shall be a member of the commission. Vacancies in the positions of appointed members of the commission shall be filled for the remainder of the unexpired term of office by the original appointing authority.

(c) Members of the commission shall serve without compensation but members of the commission who are not state officials or employees shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Members of the commission who are state officials or employees shall receive reimbursement for actual transportation costs in accordance with the policies of their respective agencies.

(d) Membership on the commission does not constitute a public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this part. (Code 1981, § 45-13-70, enacted by Ga. L. 2006, p. 149, § 1/HB 978; Ga. L. 2011, p. 617, § 3/SB 190.)

The 2011 amendment, effective July 1, 2011, in subsection (b), substituted “composed of 16 members” for “comprised of 15 members” in the first sentence, substituted “one of whom” for “of whom one” in the second sentence, and inserted “and the Secretary of State or his or her designee” in the next-to-last sentence.

Cross references. — Art in state buildings, Ch. 5, T. 8.

Editor’s notes. — Ga. L. 2011, p. 617, § 3, which amended this Code section, purported to amend subsection (a) but actually amended subsection (b).

45-13-71. Duties and responsibilities of commission.

The Capitol Art Standards Commission shall have the following duties and responsibilities:

(1) To meet at such times and places as it shall determine necessary or convenient to perform its duties. The commission shall also meet on the call of the chairperson or the Governor;

(2) To maintain minutes of its meetings;

(3) To adopt rules and regulations for the transaction of its business;

(4) To organize itself as it deems appropriate to carry out its functions;

(5) To be responsible for developing policies and procedures for and to oversee the acquisition, installation, preservation, maintenance, display, and storage of all capitol artwork. As used in this part, the term "capitol artwork" means visual art of museum quality owned by the State of Georgia that is displayed in or on the grounds of the capitol or is held for the purpose of future display to include, but not be limited to, portraits, paintings, sculptures, and plaques. The Georgia Capitol Museum shall remain responsible for the documentation, appraisal, control, handling, and conservation of the present and future artwork in the capitol art collection;

(6) To establish a collection policy for all capitol artwork;

(7) To develop standards and procedures for determining whether to acquire new artwork which shall include criteria for judging the relevance of the subject, the historical significance to the State of Georgia, and the quality of the artwork produced and an approval process for such acquisitions. No artwork shall be acquired or installed without final approval of the commission;

(8) To develop a process for the selection, placement, installation, and rotation of artwork in the capitol, in the capitol museum, and on the capitol grounds;

(9) To develop policies and procedures for outgoing loans from the capitol art collection and for temporary displays of artwork in the capitol, in the capitol museum, and on the capitol grounds;

(10) To develop deaccession policies and procedures for artwork in the capitol art collection that should be removed based upon poor quality or lack of relevance or similar factors; and

(11) To perform such other duties and responsibilities as required by law. (Code 1981, § 45-13-71, enacted by Ga. L. 2006, p. 149, § 1/HB 978.)

45-13-72. Submission of recommendations to achieve highest museum standards.

The Capitol Art Standards Commission may recommend to the Governor and the General Assembly changes in state statutes, policies,

budgets, and standards relating to the capitol art collection, with the objective of keeping the collection at the highest museum standards. (Code 1981, § 45-13-72, enacted by Ga. L. 2006, p. 149, § 1/HB 978.)

45-13-73. Funding.

The Capitol Art Standards Commission may accept federal funds granted by Congress or executive order for the purposes of this part as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds shall not commit state funds and shall not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. (Code 1981, § 45-13-73, enacted by Ga. L. 2006, p. 149, § 1/HB 978.)

45-13-74. Provisions are general law; no special law regarding capitol artwork.

The General Assembly finds that this part constitutes a general law within the meaning of Article III, Section VI, Paragraph IV(a) of the Constitution. The General Assembly intends that there be no enactment of any bill or resolution proposing a special law with respect to capitol artwork. (Code 1981, § 45-13-74, enacted by Ga. L. 2006, p. 149, § 1/HB 978.)

CHAPTER 14

COMMISSIONER OF INSURANCE

Article 1

General Provisions

Sec.

45-14-3. Duties as Safety Fire Commissioner and Industrial Loan Commissioner.

45-14-5. (Effective until January 1, 2013. See note.) Seal; sealed copies treated as originals.

Sec.

45-14-5. (Effective January 1, 2013. See note.) Seal.

Article 2

Comptroller General

45-14-20 through 45-14-23 [Repealed].

ARTICLE 1

GENERAL PROVISIONS

45-14-3. Duties as Safety Fire Commissioner and Industrial Loan Commissioner.

The Commissioner of Insurance shall be the Safety Fire Commissioner and the Industrial Loan Commissioner. (Code 1981, § 45-14-3, enacted by Ga. L. 1986, p. 855, § 25; Ga. L. 2012, p. 1089, § 2/SB 343.)

The 2012 amendment, effective July 1, 2012, substituted “Commissioner and the Industrial Loan Commissioner” for “Commissioner, the Industrial Loan Commissioner, and the Comptroller General” in this Code section.

45-14-5. (Effective until January 1, 2013. See note.) Seal; sealed copies treated as originals.

The Commissioner of Insurance, Safety Fire Commissioner, and Industrial Loan Commissioner shall have an official seal for each office of such design as he or she shall select with the approval of the Governor. Every certificate and other document or paper executed by the Commissioner of Insurance, Safety Fire Commissioner, or Industrial Loan Commissioner in the pursuance of any authority conferred upon that office by law and sealed with the seal of that office and all copies or photographic copies of papers certified by him or her and authenticated by said seal shall in all cases be evidence “in equal and like manner” as the original thereof and in all cases be primary evidence of the contents of the original and shall be admissible in any court in this state. (Code 1981, § 45-14-5, enacted by Ga. L. 1986, p. 855, § 25; Ga. L. 2012, p. 1089, § 3/SB 343.)

The 2012 amendment, effective July 1, 2012, in the first sentence, substituted “and Industrial Loan Commissioner” for “Industrial Loan Commissioner, and the Comptroller General” and inserted “or she”; and, in the second sentence, substituted “or Industrial Loan Commissioner” for “Industrial Loan Commissioner, or the

Comptroller General” and inserted “or her”.

Editor’s notes. — Code Section 45-14-5 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

45-14-5. (Effective January 1, 2013. See note.) Seal.

The Commissioner of Insurance, Safety Fire Commissioner, and Industrial Loan Commissioner shall have an official seal for each office of such design as he or she shall select with the approval of the Governor. (Code 1981, § 45-14-5, enacted by Ga. L. 1986, p. 855, § 25; Ga. L. 2011, p. 99, § 87/HB 24; Ga. L. 2012, p. 1089, § 4/SB 343.)

Delayed effective date. — This Code section, as set out above, becomes effective on January 1, 2013. For version of this Code section in effect until January 1, 2013, see the previous version of this Code section.

The 2011 amendment, effective January 1, 2013, inserted “or she” in the first sentence, and deleted the former last sentence, which read: “Every certificate and other document or paper executed by the Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, or the Comptroller General in the pursuance of any authority conferred upon that office by law and sealed with the seal of that office and all copies or photographic copies of papers certified by him and authenticated by said seal shall in all cases be evidence ‘in equal and like man-

ner’ as the original thereof and in all cases be primary evidence of the contents of the original and shall be admissible in any court in this state.” See editor’s note for applicability.

The 2012 amendment, effective January 1, 2013, substituted “and Industrial Loan Commissioner” for “Industrial Loan Commissioner, and the Comptroller General” in this Code section.

Editor’s notes. — Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

ARTICLE 2

COMPTROLLER GENERAL

45-14-20 through 45-14-23.

Repealed by Ga. L. 2012, p. 1089, § 5/SB 343, effective July 1, 2012.

Editor’s notes. — This article, relating to the Comptroller General, was based on Laws 1799, Cobb’s 1851 Digest, p. 1022; Laws 1821, Cobb’s 1851 Digest, pp. 1023, 1024; Laws 1823, Cobb’s 1851 Digest, p. 1025; Laws 1828, Cobb’s 1851 Digest, p. 1027; Laws 1838, Cobb’s 1851 Digest, p. 1029; Laws 1839, Cobb’s 1851 Digest, pp. 1031, 1032; Laws 1843, Cobb’s 1851 Digest, p. 1033; Ga. L. 1851-52, p. 288, § 14; Ga. L. 1861, p. 80, § 9; Code 1863, §§ 96, 97, 100, 102; Code 1868, §§ 94, 95, 98, 100; Code 1873, §§ 101, 102, 105, 107;

Code 1882, §§ 101, 102, 105, 107; Civil Code 1895, §§ 206, 209, 212, 214; Civil Code 1910, §§ 238, 241, 244, 246; Ga. L. 1923, Ex. Sess., p. 7, § 4; Ga. L. 1931, p. 7, § 91; Code 1933, §§ 40-1505, 40-1506, 40-1510; Ga. L. 1956, p. 802, § 2; Ga. L. 1978, p. 309, § 3; Code 1981, § 45-14-6 [repealed]; Code 1981, §§ 45-14-20—45-14-23, as redesignated by Ga. L. 1986, p. 855, § 25; Ga. L. 1990, p. 8, § 45; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.

CHAPTER 15

ATTORNEY GENERAL

Article 1

General Provisions

Sec.
45-15-13. Representation of state authorities by Attorney General.

Article 2

Department of Law

45-15-30. Created; assistants, deputies, and other support personnel; determination of duties, sala-

Sec.

ries, and effect promotions; limitation on private practice of law; disclosure requirement for assistant attorney general representing criminal defendant.

45-15-35.1. Governor's power to seek pre-clearance of any change affecting voting pursuant to Section 5 of the federal Voting Rights Act of 1965.

ARTICLE 1

GENERAL PROVISIONS

45-15-3. Duties generally.

Law reviews. — For note, "Perdue v. Baker: Who Has the Ultimate Power over Litigation on Behalf of the State of Geor-

gia — the Governor or the Attorney General?," see 21 Ga. St. U. L. Rev. 751 (2005).

JUDICIAL DECISIONS

Powers of Governor and Attorney General. — Construed together, Ga. Const. 1983, Art. V and O.C.G.A. §§ 45-15-3, 45-15-6, 45-15-35, and 45-12-26, do not vest either the Georgia governor or the attorney general with exclusive power to control legal proceedings involving the State of Georgia; instead, the governor and attorney general have concurrent powers over litigation in which

the state is a party. *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606 (2003).

Georgia Attorney General was authorized, under O.C.G.A. § 45-15-3(3), to prosecute defendant for criminal attempts to commit theft by taking as the Attorney General represented the state in criminal actions when required to do so by the Governor. *Brown v. State*, 268 Ga. App. 629, 602 S.E.2d 158 (2004).

45-15-4. Attorney General authorized to employ private counsel.

OPINIONS OF THE ATTORNEY GENERAL

Representation of local governments by members of commission. — An attorney member of the State Ethics Commission and other members of his or her law firm may generally represent local

governments so long as the representation does not involve taking an action adverse to the commission itself. 2002 Op. Att'y Gen. No. 2002-4.

45-15-9. Representation of state in United States Supreme Court and beyond state limits.

Law reviews. — For note, “Perdue v. Baker: Who Has the Ultimate Power over Litigation on Behalf of the State of Georgia — the Governor or the Attorney General?,” see 21 Ga. St. U. L. Rev. 751 (2005).

gia — the Governor or the Attorney General?,” see 21 Ga. St. U. L. Rev. 751 (2005).

JUDICIAL DECISIONS

Litigation over legislative reapportionment. — As neither the governor nor the attorney general of Georgia had the exclusive power to decide the state’s interest in litigation, the trial court properly refused the governor’s request to compel

the attorney general to dismiss an appeal to the U.S. Supreme Court filed on behalf of Georgia in a case involving legislative reapportionment under the Voting Rights Act. *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606 (2003).

45-15-13. Representation of state authorities by Attorney General.

As used in Code Sections 45-15-14 through 45-15-16, the term “state authorities” means the following instrumentalities of the state: Georgia Building Authority, Georgia Building Authority (Hospital), Georgia Building Authority (Markets), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, Georgia Ports Authority, State Road and Tollway Authority, Jekyll Island—State Park Authority, and Stone Mountain Memorial Association. (Ga. L. 1969, p. 484, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2012, p. 775, § 45/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted “Georgia

Building Authority (Penal)”, an obsolete reference in this Code section.

45-15-17. Power to conduct investigations generally; issuance and enforcement of subpoenas.

JUDICIAL DECISIONS

Authority to investigate. — Georgia Attorney General was authorized to investigate, under O.C.G.A. § 45-15-17(a), defendant’s criminal attempts to commit theft by taking as the matter related to

the state because the investigation began with the governor’s grant of funds to defendant’s organization. *Brown v. State*, 268 Ga. App. 629, 602 S.E.2d 158 (2004).

45-15-19. Governor and General Assembly authorized to make investigations; designation of district attorney to act for state in action against Attorney General.

JUDICIAL DECISIONS

Litigation over legislative reapportionment. — As neither the governor nor the attorney general of Georgia had the exclusive power to decide the state's interest in litigation, the trial court properly refused the governor's request to compel

the attorney general to dismiss an appeal to the U.S. Supreme Court filed on behalf of Georgia in a case involving legislative reapportionment under the Voting Rights Act. *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606 (2003).

ARTICLE 2

DEPARTMENT OF LAW

45-15-30. Created; assistants, deputies, and other support personnel; determination of duties, salaries, and effect promotions; limitation on private practice of law; disclosure requirement for assistant attorney general representing criminal defendant.

There is created a Department of Law with the Attorney General at the head thereof and with such numbers of deputy attorneys general, assistant attorneys general, special assistant attorneys general, other attorneys, paraprofessional personnel, and other employees or independent contractors as the Attorney General shall deem necessary to carry out the functions of the Attorney General and the Department of Law. The Attorney General is authorized to determine the title and to change the title of any attorney or other employee of the Department of Law or any attorney at law under independent contract to the Department of Law in order to define the duties and responsibilities of any attorney or other employee of the said department and to establish salaries and effect promotions of any such attorney or other employee of the said department, except that those positions in the department which are within the classified service on April 18, 1975, shall be covered by the procedures prescribed by the State Personnel Board. Neither the Attorney General nor any other attorney at law employed full time by the Department of Law shall engage in the private practice of law during his or her term of appointment. Attorneys at law under independent contract to the Department of Law may engage in the private practice of law even though they may have been appointed or designated either specially or generally as assistant attorneys general or attorneys. Notwithstanding that any attorney at law under independent contract to the Department of Law has been appointed or designated either specially or generally as an assistant attorney general and thus is identified with the State of Georgia as its representative for

cases arising within the scope of that appointment or designation, representation of a defendant in criminal proceedings by that assistant attorney general shall not constitute a conflict of interest if that assistant attorney general provides written disclosure of such appointment or designation to the defendant prior to accepting employment by that defendant or, when a court has appointed an assistant attorney general to represent an indigent criminal defendant, disclosures to the defendant and to the court, to be reflected in the record of that court, such appointment or designation as assistant attorney general. (Ga. L. 1943, p. 284, § 2; Ga. L. 1947, p. 673, § 1; Ga. L. 1961, p. 131, § 1; Ga. L. 1966, p. 43, § 1; Ga. L. 1975, p. 879, § 1; Ga. L. 1984, p. 1359, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-74/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” twice in the second sentence.

The 2012 amendment, effective July 1, 2012, in this Code section, deleted “of the State Personnel Administration” preceding “on April 18, 1975” and deleted “State Personnel Administration according” following “covered by the” in the second sentence, and inserted “or her” in the third sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

Duty of disclosure in criminal case. — Trial counsel in a criminal case had an implied duty under O.C.G.A. § 45-15-30 to disclose counsel’s status as a special assistant attorney general; moreover, the attorney general directed that special assistant attorneys general comply with the

disclosure requirements of § 45-15-30 in ordinary criminal cases and further directed that they never represent a defendant in a death penalty case, regardless of whether the defendant might be willing to waive any potential conflict. *Gibson v. Head*, 282 Ga. 156, 646 S.E.2d 257 (2007).

45-15-35. Power of Governor to direct institution of proceedings and litigation by department.

Law reviews. — For note, “Perdue v. Baker: Who Has the Ultimate Power over Litigation on Behalf of the State of Georgia — the Governor or the Attorney General?,” see 21 Ga. St. U. L. Rev. 751 (2005).

JUDICIAL DECISIONS

Litigation over legislative reapportionment. — As neither the governor nor the attorney general of Georgia had the exclusive power to decide the state’s interest in litigation, the trial court properly

refused the governor’s request to compel the attorney general to dismiss an appeal to the U.S. Supreme Court filed on behalf of Georgia in a case involving legislative reapportionment under the Voting Rights

Act. Perdue v. Baker, 277 Ga. 1, 586 S.E.2d 606 (2003).

45-15-35.1. Governor’s power to seek preclearance of any change affecting voting pursuant to Section 5 of the federal Voting Rights Act of 1965.

Notwithstanding any other provision of law to the contrary, at his discretion, the Governor shall have the power to seek preclearance of any change affecting voting pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973c, including the authority to institute litigation in the name of the state and to designate legal counsel for the state in such case. (Code 1981, § 45-15-35.1, enacted by Ga. L. 2010, p. 914, § 37/HB 540.)

Effective date. — This Code section became effective July 1, 2010.

CHAPTER 16

CORONERS

Article 1

Sec.

General Provisions

- Sec.
- 45-16-11. Compensation of county coroners; increases; calculation; supplements; expenses.
- 45-16-11.2. Monthly contingent expense allowance for the operation of the office of coroner.

Article 2

45-16-27.

Death Investigations

- 45-16-21. Definitions.
- 45-16-22. Medical examiners’ inquiries — Facilities, persons authorized to perform inquiries, payment of fees, jurisdiction, and clerical and secretarial assistance.
- 45-16-24. Notification of suspicious or unusual deaths; court ordered medical examiner’s inquiry; written report of inquiry.
- 45-16-25. Duties of coroner or county

medical examiner upon receipt of notice of suspicious or unusual death; authority to embalm body; identification; inventory and disposition of deceased’s property; use of deceased’s property for evidence; autopsy when death occurs on state owned property.

When inquest to be held; special situations; coroner’s fee; issuance of subpoenas for books, records, or papers; cost of copying; limited disclosure of photographs.

45-16-32. Report of examination and investigation; maintenance of copies; verification of foul play by forensic laboratory; transmittal of copies of reports to district attorneys.

45-16-50. Providing biological substances to canine instructors or schools.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Adequacy Cause of Death as Determined from
of Consent to Autopsy, 34 POF2d 557. Autopsy, 39 POF2d 1.

ARTICLE 1

GENERAL PROVISIONS

45-16-1. Election, commission, removal; qualifications; affidavit
of qualification.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice tice Forms, Coroners or Medical Examin-
Forms. — 7B Am. Jur. Pleading and Prac- ers, § 2.

45-16-11. Compensation of county coroners; increases; calcula-
tion; supplements; expenses.

(a)(1) Any other law to the contrary notwithstanding, the minimum annual salary of each coroner in any of the counties in this state in the following population brackets shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 1990 or any future such census. Except as otherwise provided in paragraph (2) of this subsection, each such coroner shall receive an annual salary, payable in equal monthly installments from the funds of the coroner's county, of not less than the amount fixed in the following schedule:

<u>Population</u>	<u>Minimum Salary</u>
0 — 11,889	\$ 1,200.00
11,890 — 19,999	2,400.00
20,000 — 34,999	3,600.00

(2) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (b) of this Code section, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in differ-

ent percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases received by state employees become effective; provided, however, that if the cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the coroner in such amount as it may fix from time to time; but no coroner's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the coroner's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the coroner.

(b) The amounts provided in paragraph (1) of subsection (a) of this Code section and Code Section 45-16-11.1, as increased by paragraph (2) of subsection (a) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any coroner after December 31, 2000, effective the first day of January following the completion of each such period of service.

(c) The minimum salaries provided for under this Code section shall be in addition to any fees paid by the county governing authority to the coroner on a per-call basis and in addition to any expenses.

(d) The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for

the operation of a coroner’s office shall come from funds other than the funds specified as salary in this Code section.

(e) This Code section shall not be construed to reduce the salary of any coroner in office on July 1, 2001; provided, however, that successors to such coroners in office on July 1, 2001, shall be governed by the provisions of this Code section. All local legislation in effect on July 1, 2001, or enacted thereafter affecting compensation for coroners of the various counties shall be of full force and effect except where the same provides for a salary lower than provided in this Code section, in which event this Code section shall prevail. (Code 1981, § 45-16-11, enacted by Ga. L. 2001, p. 902, § 18A; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-75/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the beginning of the first sentence of paragraph (a)(2).

The 2012 amendment, effective July 1, 2012, substituted “Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive” for “On and after July 1, 2001, whenever the employees in the classified service of the State Personnel Administration receive” in the first sentence of paragraph (a)(2).

Editor’s notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-16-11.2. Monthly contingent expense allowance for the operation of the office of coroner.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each of the counties in this state in the following population bracket is authorized to provide as contingent expenses for the operation of the office of coroner, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

<u>Population</u>	<u>Minimum Monthly Expenses</u>
0 — 34,999	\$50.00

(Code 1981, § 45-16-11.2, enacted by Ga. L. 2001, p. 902, § 18A; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “Minimum Monthly Expenses” for “Minimum Salary” in the table.

ARTICLE 2

DEATH INVESTIGATIONS

RESEARCH REFERENCES

Am. Jur. Trials. — Pathology for Litigators, 77 Am. Jur. Trials 407.

45-16-20. Short title.

RESEARCH REFERENCES

ALR. — Civil liability in conjunction with autopsy, 97 ALR5th 419.

45-16-21. Definitions.

As used in this article, the term:

(1) “Autopsy” means the dissection of a dead body and the examination of bone, tissue, organs, and foreign objects for the purpose of determining the cause of death and circumstances surrounding the same, which procedure shall include as a minimum an external examination and the examination of the brain, neck and thoracic organs, and abdominal organs.

(1.1) “Chief medical examiner” means the chief medical examiner appointed pursuant to Code Section 35-3-153.

(2) “County medical examiner” means that office established in lieu of the office of coroner pursuant to Code Section 45-16-80 or any amendment to the Constitution continued pursuant to the authority of Article XI, Section I, Paragraph IV of the Constitution.

(3) “Division” means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(4) “External examination” means an external examination of a dead body but shall not include dissection of the body for any purpose except dissection which is necessary for and limited to procurement of blood or body fluids for toxicological or other analysis.

(5) “Forensic consultant” means a person meeting the requirements and authorized to perform the duties specified in subsection (c) of Code Section 45-16-23.

(6) “Inquest” means an official judicial inquiry before a coroner and coroner’s jury for the purpose of determining the cause of death.

(7) “Limited dissection” means the incision into or dissection of a dead body for diagnosis or evidence collection and the term includes

without being limited to an external examination but does not include an individual examination of the:

- (A) Brain;
- (B) Neck organs;
- (C) Thoracic organs; and
- (D) Abdominal organs

but may include an examination of any but not all of the categories of organs specified in subparagraphs (A) through (D) of this paragraph.

(8) "Local medical examiner" means a person meeting the requirements and authorized to perform the duties specified in subsection (b) of Code Section 45-16-23.

(9) "Medical examiner" means:

- (A) The chief medical examiner;
- (B) A regional medical examiner;
- (C) A county medical examiner;
- (D) A local medical examiner; or

(E) Any person who is employed by the state and appointed as a medical examiner as of December 1, 1989, who continues to perform the duties and exercise the powers of a medical examiner under this article when such performance and exercise are within the scope of such employment.

(10) "Medical examiner's inquiry" means an inquiry made by a medical examiner into the circumstances surrounding a death which is required to be reported under the provisions of Code Section 45-16-24, which inquiry may include, but is not required to include, a scene investigation, an external examination, a limited dissection, an autopsy, or any combination thereof.

(11) "Medical examiner's investigator" means a person meeting the requirements and authorized to perform the duties specified in subsection (d) of Code Section 45-16-23.

(12) "Peace officer in charge" means any peace officer of the Georgia State Patrol or agent of the Georgia Bureau of Investigation, sheriff or sheriff's deputy, peace officer assigned to the coroner's office, county policeman, city policeman, or city detective who may be in charge of the investigation of any case involving a death covered by Code Sections 45-16-27 and 45-16-32.

(13) "Regional medical examiner" means a medical examiner who is employed by the Georgia Bureau of Investigation and who is a

pathologist appointed by the chief medical examiner pursuant to Code Section 35-3-153.

(14) "Scene investigation" means an examination by the medical examiner or medical examiner's investigator of the area surrounding a dead body or area where a death or agonal event occurred.

(15) "Unattended death," "died unattended," or "died unattended by a physician" means a death where a person dies of apparently natural causes and has no physician who can certify the death as being due to natural causes. If the suspected cause of death directly involves any trauma or complication of such trauma, the death must be reported to the coroner or county medical examiner. An unattended death also occurs when a person is admitted in an unresponsive state to a hospital and dies within 24 hours of admission. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 2; Ga. L. 1960, p. 1009, § 1; Ga. L. 1988, p. 1631, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1992, p. 6, § 45; Ga. L. 1992, p. 1436, § 3; Ga. L. 1997, p. 1421, § 4; Ga. L. 1998, p. 128, § 45; Ga. L. 2003, p. 498, § 1.)

The 2003 amendment, effective May 31, 2003, deleted "certified in forensic pathology by the American Board of Pathol-

ogy" following "pathologist" in the middle of paragraph (13).

45-16-22. Medical examiners' inquiries — Facilities, persons authorized to perform inquiries, payment of fees, jurisdiction, and clerical and secretarial assistance.

(a) The director of the division is authorized and directed to cooperate with and assist the peace officers in charge, medical examiners, and coroners of the state in making the facilities of the division available for the performing of medical examiners' inquiries on dead bodies as required by this article.

(b) The county governing authority shall after consulting with the coroner, if any, be authorized to appoint one or more local medical examiners who shall be licensed physicians or pathologists. The chief medical examiner may, at the request of a county governing authority, authorize one or more licensed physicians or pathologists at convenient locations throughout the state to act as local medical examiners in performing medical examiners' inquiries as required by this article. The chief medical examiner shall confer with local county officials in making appointments of regional and local medical examiners. Any regional or local medical examiner appointed by the chief medical examiner shall have such jurisdiction within this state as designated by the chief medical examiner.

(c) Except as otherwise provided in this article, it shall be in the sole discretion of the medical examiner to determine whether or not an

autopsy or limited dissection is required; provided, however, that the medical examiner shall give due consideration to the opinions of the coroner and the peace officer in charge regarding the requirements of accepted investigation techniques and the rules of evidence applicable thereto.

(d) In the event that any local medical examiner or regional medical examiner is unable or unwilling to serve in any case, the coroner or the peace officer in charge may call upon the chief medical examiner, who shall perform a medical examiner's inquiry or direct another medical examiner to perform such inquiry.

(e) For each external examination so performed, in cases where limited dissection or autopsy of the body is not required, the medical examiner shall receive the fee set in accordance with the provisions of Code Section 35-3-151. The fee in each case is to be paid from funds of the county in which the act was committed; or, if the county in which the act was committed is unknown, the fee shall be paid from funds of the county in which the body was found. In the event the place in which the act was committed is not known but is later established, the county in which the act was committed shall be responsible for payment of fees incurred by the medical examiner. Subject to funds being appropriated or otherwise available for such purpose, the chief medical examiner shall provide transportation of the deceased person to the site of the autopsy, if such autopsy is to be performed by a state or regional medical examiner employed by the state, and to return the body to the county where the death occurred.

(f) When death occurs in a hospital as a direct result and consequence of acts or events taking place in a county other than the one in which such death occurs, the body shall be returned to the county in which such acts or events took place. When a dead body is found in a county in which the acts or events leading to death did not occur, it shall be returned to the county in which the acts or events did occur, if known. The coroner or local medical examiner of the county in which such acts or events took place shall assume jurisdiction and the medical examiner's inquiry, if any performed, shall be paid for from funds of the county in which such acts or events took place.

(f.1) When death occurs in a hospital as a direct result and consequence of acts or events taking place in a county other than the one in which such death occurs, the hospital shall immediately notify the coroner or the county medical examiner of the county in which the acts or events resulting in the death occurred.

(g) In the event that a medical examiner's inquiry is performed by the chief medical examiner or an employee thereof, no fee therefor shall be imposed pursuant to this Code section. In the event that a medical

examiner's inquiry is performed by a medical examiner regularly employed at a fixed compensation by any county or group of counties, no fee shall be imposed upon any county or group of counties employing that medical examiner at a fixed compensation.

(h) Any person holding office as a medical examiner pursuant to an appointment of the state medical examiner on May 1, 1997, shall continue in the exercise of his or her functions and duties until such person's successor has been duly appointed. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 3; Ga. L. 1960, p. 1009, § 2; Ga. L. 1969, p. 38, § 1; Ga. L. 1974, p. 503, § 1; Ga. L. 1979, p. 1321, § 1; Ga. L. 1984, p. 812, § 1; Ga. L. 1985, p. 843, § 4; Ga. L. 1989, p. 417, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1997, p. 1421, § 5; Ga. L. 1998, p. 128, § 45; Ga. L. 2009, p. 81, § 1A/HB 64.)

The 2009 amendment, effective July 1, 2009, added subsection (f.1).

45-16-24. Notification of suspicious or unusual deaths; court ordered medical examiner's inquiry; written report of inquiry.

(a) When any person dies in any county in this state:

- (1) As a result of violence;
- (2) By suicide or casualty;
- (3) Suddenly when in apparent good health;
- (4) When unattended by a physician;
- (5) In any suspicious or unusual manner, with particular attention to those persons 16 years of age and under;
- (6) After birth but before seven years of age if the death is unexpected or unexplained;
- (7) As a result of an execution carried out pursuant to the imposition of the death penalty under Article 2 of Chapter 10 of Title 17;
- (8) When an inmate of a state hospital or a state, county, or city penal institution; or
- (9) After having been admitted to a hospital in an unconscious state and without regaining consciousness within 24 hours of admission,

it shall be the duty of any law enforcement officer or other person having knowledge of such death to notify immediately the coroner or county medical examiner of the county in which the acts or events resulting in the death occurred or the body is found. For the purposes

of this Code section, no person shall be deemed to have died unattended when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31.

(b) A coroner or county medical examiner who is notified of a death pursuant to subsection (a) of this Code section shall order a medical examiner's inquiry of that death.

(c) Whenever an affidavit is made and filed with a court having criminal jurisdiction attesting that a person came to his death by foul play, that court may interrogate and examine witnesses, if any exist, as to the necessity of a medical examiner's inquiry. Should the court decide that a medical examiner's inquiry is essential to the ends of justice, such inquiry shall be ordered by that court.

(d) A medical examiner's inquiry required under this Code section shall be reduced to writing and filed as provided in Code Section 45-16-32. At the time of such filing, a copy of the medical examiner's inquiry into a death reported to a coroner or county medical examiner pursuant to paragraph (6) of subsection (a) of this Code section shall also be transmitted to the department of family and children services of the county in which the child resided at the time of death. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 8; Ga. L. 1984, p. 812, § 2; Ga. L. 1985, p. 1073, § 1; Ga. L. 1990, p. 1735, § 3; Ga. L. 1994, p. 391, § 1; Ga. L. 2009, p. 81, § 1B/HB 64.)

The 2009 amendment, effective July 1, 2009, substituted "county in which the acts or events resulting in the death occurred or the body is found" for "county

wherein the body is found or death occurs" in the middle of the ending undersigned paragraph in subsection (a).

JUDICIAL DECISIONS

Delivery of deceased's body to county coroner as circumstantial evidence of venue. — Although the prosecution did not introduce direct evidence which showed that the location of a robbery and murder was in the county where the defendant was tried, it did introduce evidence which showed that the crime occurred near a lounge that was in the

county, and the jury was able to find proper venue by considering that evidence and the facts that the police officer who investigated the crime worked for the county and that the deceased's body was taken to the county's coroner for autopsy. *Chapman v. State*, 275 Ga. 314, 565 S.E.2d 442 (2002).

45-16-25. Duties of coroner or county medical examiner upon receipt of notice of suspicious or unusual death; authority to embalm body; identification; inventory and disposition of deceased's property; use of deceased's property for evidence; autopsy when death occurs on state owned property.

(a)(1) Upon receipt of the notice required by Code Section 45-16-24, the coroner or county medical examiner shall immediately take charge of the body. If a registered professional nurse authorized to make a pronouncement of death under Code Section 31-10-16 or a qualified physician is not available, a coroner, deputy coroner, or medical examiner's investigator may make a pronouncement of death at the investigation scene if, and only if, one or more of the following conditions is met:

- (A) The body is in a state of rigor mortis with lividity present;
- (B) The body is in a state of decomposition evidenced by a component of putrefaction;
- (C) The body is skeletonized; or
- (D) Death has been established by qualified emergency medical services personnel.

(2) It shall be the duty of a coroner notified as required by Code Section 45-16-24 to summon a medical examiner and proper peace officer. It shall be the duty of a county medical examiner so notified to summon a proper peace officer. When present at the scene of death, the peace officer shall have jurisdiction over the scene of death. The medical examiner or coroner and the peace officer shall together make inquiries regarding the cause, manner, and circumstances of death. If either the peace officer or medical examiner is not present at the scene of death, then whichever of the two officers is present shall have jurisdiction over the scene of death. If neither the peace officer nor the medical examiner is present at the scene of death in any county in which the office of coroner has not been replaced by a county medical examiner, the coroner shall assume the responsibility of such officers at the scene of death and shall have the body transported to a local medical examiner who shall conduct a medical examiner's inquiry. The medical examiner, at any time, to facilitate examination, when he or she deems it necessary, may have the body embalmed or retain it for refrigeration for preservation or to avoid the threat of infectious disease prior to release of the body to the next of kin. Such expense of embalming shall be paid by the county of the coroner's or medical examiner's jurisdiction.

(b) When positive identification of dead bodies has not been established conclusively through personal visual examination of the remains

by persons well acquainted with the decedent in life or by comparison of fingerprints or footprints or by identification of unique physical characteristics, such as prosthetic appliances, or by comparison of skeletal X-rays, including previous fractures, or by amputations, the medical examiner must either chart or X-ray the decedent's dentition or call upon a licensed dentist of the medical examiner's choosing to carry out a dental examination of the body. This may be accomplished either by examination in situ or by removal of the jaws with teeth to the dentist's office. The dentist shall chart the deceased's dentition and make two copies, one of which shall be filed with the medical examiner's inquiry report to the division and the other with the Georgia Crime Information Center of the Georgia Bureau of Investigation. The dentist may, at his or her discretion, make such X-rays of the mouth as he or she deems necessary. The dentist shall be paid a fee as determined in accordance with Code Section 35-3-151. These fees shall be paid by the county of the coroner's or local medical examiner's jurisdiction.

(c) The coroner or county medical examiner shall, in the absence of the next of kin of the deceased person, take possession of all property of value found on such person, make an exact inventory thereof on his or her report, and surrender the same to the person entitled to its custody or possession. The coroner, medical examiner, or peace officer shall take possession of any objects, anatomical specimens, or articles which, in his or her opinion, may be helpful in establishing the cause of death, manner of death, or identification of the deceased; and in cooperation with a forensic laboratory he or she may make such tests and examinations of said objects, specimens, or articles as may be necessary or useful in determining the cause of death, manner of death, or the identity of the deceased. At his or her discretion, the medical examiner or coroner may dispose of such objects, specimens, or articles when the medical examiner's or coroner's need for their retention has ended. In the event that a criminal prosecution arises, all such objects and articles together with reports of any examinations made upon them shall be retained in the custody of the investigating agency or the forensic laboratory which conducted the examination until their production as evidence is required by the prosecuting officer or upon written order of the peace officer in charge or court having proper jurisdiction.

(d) The Georgia Bureau of Investigation is authorized to perform a post mortem examination and autopsy on a person whose death occurs within a state owned or leased building or on the curtilage of such building. The Georgia Bureau of Investigation shall have jurisdiction relating to the investigation of such a death, and this authority and jurisdiction shall supersede any other authority or jurisdiction provided for by this article relating to a post mortem examination or autopsy. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 9; Ga. L. 1960, p. 1009, § 6; Ga.

L. 1985, p. 843, § 5; Ga. L. 1989, p. 829, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1990, p. 1968, § 1; Ga. L. 1996, p. 364, § 1; Ga. L. 1997, p. 1421, § 6; Ga. L. 2000, p. 1585, §§ 1, 2; Ga. L. 2009, p. 610, § 1/SB 38; Ga. L. 2010, p. 574, § 1/HB 1095.)

The 2009 amendment, effective July 1, 2009, added subsection (d).

The 2010 amendment, effective July 1, 2010, in subsection (c), substituted “a forensic laboratory” for “the division” in

the middle of the second sentence and substituted “investigating agency or the forensic laboratory which conducted the examination” for “director of the division” in the middle of the last sentence.

45-16-27. When inquest to be held; special situations; coroner’s fee; issuance of subpoenas for books, records, or papers; cost of copying; limited disclosure of photographs.

(a) Coroners shall require an inquest to be conducted in their respective counties as follows:

(1) When any person dies under any circumstances specified in paragraphs (1) through (8) of subsection (a) of Code Section 45-16-24; provided, however, that an inquest is not required to be held, although the coroner is authorized to hold an inquest, under the following circumstances:

(A) When upon the completion of the medical examiner’s inquiry the peace officer in charge and the medical examiner are satisfied that, even though death resulted from violence, no foul play was involved. In this event, the peace officer in charge and the medical examiner shall make a written report of their investigation and findings to the division as set forth in Code Section 45-16-32 and upon their recommendation, the coroner shall make and file a proper death certificate;

(B) When there is sufficient evidence to establish the cause and manner of death, even though the medical examiner’s inquiry revealed that death resulted from foul play;

(C) When no demand for an inquest is made within 30 days after the filing of the death certificate. However, if such demand is made by the party or parties affected by the death, the coroner is authorized to hold the inquest;

(D) When upon the completion of the medical examiner’s inquiry the medical examiner and peace officer in charge are sufficiently satisfied that death resulted from natural causes, and that medical examiner or coroner is willing to and does sign and file a proper death certificate, and no demand for an inquest is made within 30 days thereafter;

(D.1) In cases of deaths resulting from an accident involving any civil aircraft, it shall be the responsibility of the peace officer in charge to notify the National Transportation Safety Board or the Federal Aviation Administration of such accident, to proceed to the scene and guard the area in such manner that no bodies, wreckage, cargo, or mail shall be moved or disturbed until authorized by a representative of the National Transportation Safety Board or the Federal Aviation Administration except to the extent necessary to remove persons injured or trapped, to protect the wreckage from further damage, or to protect the public from injury. Where it is necessary to move aircraft wreckage, mail, or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks. The coroner or medical examiner shall assist investigators from the National Transportation Safety Board or the Federal Aviation Administration as authorized by federal law;

(E) When after full and complete investigation no evidence of foul play is found in cases of hidden cause of death which fall under the jurisdiction of the coroner. The coroner shall be authorized to sign the death certificate on the basis of the information given to him in the reports of the peace officer in charge and the medical examiner, provided that, in such hidden causes of death, after a complete investigation, if sufficient medical history is obtained by the coroner, the peace officer in charge, or the medical examiner to disclose the cause of death and if the attending physician will sign the death certificate, such cases shall not come under the jurisdiction of the coroner; provided, further, that, if there are sufficient competent eyewitnesses to an act in the opinion of the peace officer in charge, such cases shall not come under the jurisdiction of the coroner; or

(F) In cases of deaths of personnel in the armed forces of the United States government resulting from airplane disasters involving airplanes of the armed forces, including crashes or explosions, which deaths shall not come under the jurisdiction of the coroner. It shall be the responsibility of the peace officer in charge to notify the proper armed forces of the United States government immediately of such airplane crashes or explosions in order that they may send their trained forces to the scene for investigation. It shall be the duty of the peace officer in charge, when notified of such crashes or explosions, to proceed to the scene and guard the area in such manner that no bodies or parts of said airplanes shall be moved or disturbed until the arrival of proper investigating officers from the armed forces of the United States government;

(2) When an inmate of a state hospital or a state, county, or city penal institution dies unexpectedly without an attending physician

or as a result of violence. The chief medical examiner or his or her designee, regional medical examiner, or local medical examiner shall perform all medical examiners' inquiries. The coroner, in those counties in which such office has not been replaced by a local medical examiner, shall hold an inquest after receiving the written reports as set forth in Code Section 45-16-32;

(3) When ordered by a court in connection with a medical examiner's inquiry ordered by that court pursuant to subsection (c) of Code Section 45-16-24; or

(4) Notwithstanding any other provisions of this subsection, no person shall be deemed to have died unattended by a physician when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31.

(b) On and after January 1, 2007, coroners shall be entitled to an investigation fee of \$175.00 where no jury is impaneled or a fee of \$250.00 where a jury is impaneled and shall be paid upon receipt of a monthly statement to the county treasury. A deputy coroner shall receive the same fee as the coroner for the performance of services in place of the coroner and shall be paid upon receipt of a monthly statement to the county treasury. Such fee shall be paid within ten days after receipt of the coroner's monthly statement by the county where the investigation or inquest is held except in counties where the coroner receives an annual salary, in which case no fee shall be imposed upon the county by such salaried coroner or deputy coroner.

(b.1) Any local Acts providing for the compensation of the various coroners shall remain in full force and effect, except in those instances where such local Acts provide for a salary in an amount which is less than the amount of compensation such coroner would be entitled to pursuant to subsection (b) of this Code section in which case the coroner may select on an annual basis beginning January 1, 2007, to be compensated pursuant to subsection (b) of this Code section or by the salary provided for by local Act.

(c) When a coroner or a medical examiner or a medical examiner from the office of chief medical examiner, as established in Code Section 35-3-153, conducts an investigation into the death of an individual, the coroner, medical examiner, or medical examiner from the office of chief medical examiner shall be authorized to issue subpoenas to compel the production of any books, records, including but not limited to medical records from hospitals, medical clinics, psychiatric hospitals, physicians' offices, chiropractors' offices, and any other health care delivery facility, or papers relevant to the cause of death including without limitation AIDS confidential information as defined by Code Section 31-22-9.1. Any books, records, or papers received by the coroner,

medical examiner, or medical examiner from the office of chief medical examiner pursuant to the subpoena must be regarded as confidential information and privileged and not subject to disclosure under Article 4 of Chapter 18 of Title 50. The actual costs of copying any books, records, or papers for the purposes of responding to a subpoena under this subsection shall be paid out of county funds to the person or entity required to respond to that subpoena, and the governing authority of the county of which that coroner or county medical examiner is a public officer shall pay those costs within 30 days after a bill therefor is submitted to the county. A medical examiner from the office of chief medical examiner shall pay the costs of copying from state funds within 30 days after a bill therefor is submitted to the state.

(d) Autopsy photographs shall not be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that this subsection shall have no application to the disclosure of such photographs to law enforcement agencies and prosecutors for law enforcement purposes or, in closed criminal investigations, to medical schools, medical facilities, and physicians for medical purposes; to individuals who have secured a written release from the deceased's next of kin; or to the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of securing a written release or when access to the photographs is requested by the next of kin, the deceased's next of kin shall be:

- (1) The spouse of the deceased if living;
- (2) If there is no living spouse of the deceased, an adult child of the deceased;
- (3) If there is no living spouse or adult child, a parent of the deceased;
- (4) If there is no living spouse, adult child, or parent, a sibling of the deceased;
- (5) If there is no living spouse, adult child, parent, or sibling of the deceased, a grandparent of the deceased;
- (6) If none of the above are living, an uncle of the deceased;
- (7) If none of the above are living, an aunt of the deceased; or
- (8) If none of the above are living, a first cousin of the deceased.

A superior court may, in closed criminal investigations, order the disclosure of such photographs upon findings in writing that disclosure is in the public interest and that it outweighs any privacy interest that may be asserted by the deceased's next of kin. In any such action, the court shall review the photographs in question in camera and may

condition any disclosure on such measurers as the court may deem necessary to accommodate the interests of the parties before it.

(e)(1) Crime scene photographs and video recordings, including photographs and video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including, without limitation, where the deceased person's genitalia are exposed, shall not be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that this subsection shall not prohibit disclosure of such material to the deceased's next of kin or to an individual who has secured a written release from the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of such access, the deceased's next of kin shall be:

(A) The spouse of the deceased if living;

(B) If there is no living spouse of the deceased, an adult child of the deceased; or

(C) If there is no living spouse or adult child, a parent of the deceased.

(2) Subject to the provisions of paragraph (3) of this subsection, in the case of closed criminal investigations a superior court may order the disclosure of such photographs or video recordings upon findings in writing that disclosure is in the public interest and outweighs any privacy interest that may be asserted by the deceased person's next of kin. In making such determination, the court shall consider whether such disclosure is necessary for public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy, and whether such disclosure is the least intrusive means available considering the availability of similar information in other public records. In any such action, the court shall review the photographs in question in camera with the custodian of crime scene materials present and may condition any disclosure on such condition as the court may deem necessary to accommodate the interests of the parties.

(3) Prior to releasing any crime scene material described in paragraph (1) of this subsection, the custodian of such material shall give the deceased person's next of kin at least two weeks' notice. No court shall order a disclosure pursuant to paragraph (2) of this subsection which would disregard or shorten the duration of such notice requirement.

(4) The provisions of this subsection shall apply to all undisclosed material which is in the custody of a state or local agency on May 20,

2010, and to any such material which comes into the custody of a state or local agency after such date.

(5) This subsection shall not apply to disclosure of crime scene material to counsel representing a convicted defendant in a habeas corpus action pursuant to Chapter 14 of Title 9, on an extraordinary motion for new trial under Code Section 5-5-40 or 5-5-41, or in a federal habeas corpus action under Section 2254 or 2255 of Title 28 of the United States Code for the purpose of preparing to file or litigating such proceedings. Counsel may disclose such materials to his or her client and any expert or investigator assisting counsel but shall not otherwise disseminate such materials, except to the extent they may be necessary exhibits in court proceedings. A request pursuant to this paragraph shall clearly state that such request is being made for the purpose of preparing to file and litigate proceedings enumerated in this paragraph.

(6) The director of the Georgia Bureau of Investigation and the Board of Public Safety shall promulgate rules and regulations governing the viewing of materials described in paragraph (1) of this subsection by bona fide credentialed members of the press. (Laws 1823, Cobb's 1851 Digest, p. 537; Code 1863, § 566; Code 1868, § 630; Code 1873, § 589; Code 1882, § 589; Ga. L. 1893, p. 116, § 1; Penal Code 1895, § 1255; Ga. L. 1901, p. 44, § 1; Penal Code 1910, § 1337; Code 1933, § 21-202; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 5; Ga. L. 1960, p. 1009, § 4; Ga. L. 1961, p. 437, § 1; Ga. L. 1980, p. 543, § 5; Ga. L. 1981, p. 611, § 2; Ga. L. 1984, p. 812, § 4; Ga. L. 1985, p. 1073, § 2; Ga. L. 1986, p. 10, § 45; Ga. L. 1986, p. 1594, § 2; Ga. L. 1988, p. 722, § 1; Ga. L. 1990, p. 1735, § 3; Ga. L. 1995, p. 350, § 1; Ga. L. 1997, p. 1421, §§ 7, 8; Ga. L. 1999, p. 869, § 3; Ga. L. 2002, p. 667, § 1; Ga. L. 2006, p. 568, § 12/SB 450; Ga. L. 2010, p. 259, § 3/HB 1322.)

The 2006 amendment, effective April 28, 2006, in the first sentence of subsection (b), substituted "January 1, 2007" for "July 1, 1999", and substituted "\$175.00" for "\$125.00"; and added subsection (b.1).

The 2010 amendment, effective May 20, 2010, added subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "May 20, 2010," was substituted for "the effective date of this subsection" in paragraph (e)(4).

Editor's notes. — Ga. L. 2010, p. 259, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Meredith Emerson Memorial Privacy Act'."

Ga. L. 2010, p. 259, § 2, not codified by the General Assembly, provides: "The General Assembly finds that photographs or video recordings of certain crime scene photos depict the deceased in graphic and often disturbing fashion. Such photographs or video may depict or describe the deceased nude, grossly dismembered, or decapitated. As such photographs or video recordings are highly sensitive depictions of the deceased which, if viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The legislature finds that the existence of certain publications and the Internet and

the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of photographs and video recordings 24 hours a

day and that widespread unauthorized dissemination of such images would subject the immediate family of the deceased to continuous injury.”

45-16-32. Report of examination and investigation; maintenance of copies; verification of foul play by forensic laboratory; transmittal of copies of reports to district attorneys.

The medical examiner and coroner shall complete a report of each medical examiner’s inquiry and coroner’s investigation and shall maintain permanent records of such reports. The coroner or county medical examiner may file all original reports with the clerk of the superior court of the county. In cases where such report indicates a suspicion of foul play, the medical examiner and peace officer in charge shall transmit any specimens, samples, or other evidence to a forensic laboratory for analysis. In cases where reports indicating foul play are verified by the forensic laboratory, the laboratory shall provide a completed lab report to the appropriate prosecuting attorney where the acts or events leading to the death occurred. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 4; Ga. L. 1960, p. 1009, § 3; Ga. L. 1984, p. 812, § 5; Ga. L. 1985, p. 843, § 10; Ga. L. 1989, p. 417, § 2; Ga. L. 1990, p. 1735, § 3; Ga. L. 1999, p. 869, § 4; Ga. L. 2010, p. 574, § 2/HB 1095.)

The 2010 amendment, effective July 1, 2010, in the first sentence, substituted “complete” for “file”, substituted “and shall” for “with the director of the division. The division shall maintain the reports and function as a central repository for the storage and dissemination of such reports pursuant to Article 4 of Chapter

18 of Title 50. The coroner or county medical examiner shall”; substituted “a forensic laboratory” for “the division” near the end of the third sentence; and, in the last sentence, substituted “forensic laboratory, the laboratory” for “division, the director of the division” and deleted “crime” preceding “lab report”.

45-16-43. (Repealed effective January 1, 2013) Receipt as evidence of records, findings, and reports of medical examiners’ inquiries.

Editor’s notes. — Ga. L. 2011, p. 99, § 88/HB 24, provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume.

Ga. L. 2011, p. 99, § 101/HB 24, not

codified by the General Assembly, provides, in part, that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011).

45-16-50. Providing biological substances to canine instructors or schools.

A medical examiner within the state of Georgia is authorized to provide to an approved canine instructor or school certain biological

substances such as human blood or bodily fluids for the sole purpose of utilizing such substances for the training and handling of police canines in body recovery of human remains or rescue of persons. Such biological substances shall be contained and transported in accordance with appropriate health and safety standards. (Code 1981, § 45-16-50, enacted by Ga. L. 2009, p. 610, § 2/SB 38.)

Effective date. — This Code section became effective July 1, 2009.

CHAPTER 17

NOTARIES PUBLIC

Article 1

General Provisions

Sec.

45-17-13. Change of residence, address, or name.

45-17-20. Penalty; prosecution of violations of article.

Sec.

45-17-2. Qualifications of notaries.

45-17-2.1. Application to be a notary; endorsements and declarations.

ARTICLE 1

GENERAL PROVISIONS

45-17-1. Definitions.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 18B Am. Jur. Pleading and Practice Forms, Notaries Public, § 1.

45-17-2. Qualifications of notaries.

(a) Any individual applying for appointment to be a notary public shall:

(1) Be at least 18 years old;

(2) Be a United States citizen or be a legal resident of the United States;

(3) Be a legal resident of the county from which such individual is appointed;

(4) Have, and provide at the time of the application, the applicant's operating telephone number; and

(5) Be able to read and write the English language.

(b) The qualification of paragraph (3) of subsection (a) of this Code section shall not apply to any nonresident individual applying for appointment as a notary public under the provisions of Code Section 45-17-7. (Orig. Code 1863, § 1449; Code 1868, § 1506; Code 1873, § 1500; Code 1882, § 1500; Civil Code 1895, § 501; Civil Code 1910, § 619; Code 1933, § 71-102; Ga. L. 1947, p. 1108, § 1; Ga. L. 1949, p. 1940, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 330, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, § 1; Ga. L. 1986, p. 1446, § 2; Ga. L. 2007, p. 221, § 1/HB 274.)

The 2007 amendment, effective July 1, 2007, substituted “shall” for “must be” at the end of the introductory language of subsection (a); in paragraph (a)(1), inserted “Be” at the beginning; rewrote paragraph (a)(2); in paragraph (a)(3), substituted “Be a legal resident” for “A resident” at the beginning, and deleted “and” at the end; added present paragraph

(a)(4); redesignated former paragraph (a)(4) as present paragraph (a)(5), and, in paragraph (a)(5), inserted “Be” at the beginning; and, in subsection (b), substituted “qualification of paragraph (3)” for “qualifications of paragraphs (2) and (3)” near the beginning, and inserted “nonresident” near the middle.

45-17-2.1. Application to be a notary; endorsements and declarations.

(a)(1) Any individual desiring to be a notary public shall submit application to the clerk of superior court of the county in which the individual resides or, when applying under the provisions of Code Section 45-17-7, to the clerk of superior court of the county in which the individual works or has a business. Except for applicants applying under the provisions of Code Section 45-17-7, the applicant shall submit proof to the clerk of superior court that he or she resides in the county in which the applicant is applying. Such proof shall consist of one of the following:

- (A) A valid Georgia driver’s license;
- (B) A valid United States passport;
- (C) A valid voter identification card; or

(D) Such other valid identification by a local or state government or by the United States government.

(2) The applicant shall sign and swear or affirm as outlined in paragraph (2) of subsection (b) of this Code section to the truthfulness of the application which shall state:

(A) That the applicant resides or works or has a business in the county of application and the address of the residence or business. The applicant shall use his or her residential address for purposes

of the application and may only use a business address for the application if the applicant is applying pursuant to the provisions of Code Section 45-17-7;

- (B) That the applicant is at least 18 years old;
- (C) That the applicant can read and write the English language;
- (D) That the applicant has an operating telephone number;
- (E) All denials, revocations, suspensions, restrictions, or resignations of a notary commission held by the applicant; and
- (F) All criminal convictions of the applicant, including any plea of nolo contendere, except minor traffic violations.

(b) In addition to the application required in subsection (a) of this Code section, every applicant for initial appointment as a notary public shall also submit the following endorsement and declaration to the clerk of superior court of the county in which the individual makes application:

(1) Endorsements from two persons who are not relatives of the applicant, who are at least 18 years old, who reside in the county in which the individual makes application, and who have known the applicant for at least one month. The endorsement shall be in the following form:

I, _____ (name of endorser), being 18 years of age or older and a legal resident of _____ (name of county), believe the applicant for a notary public commission, _____ (name of applicant), who is not related to myself, to be a person of integrity, of good moral character, and capable of performing notarial acts. I have known the applicant for one month or more.

(Signature of endorser)

(Date)

(Address of endorser)

(Telephone number of endorser)

(2) A declaration of applicant which shall have been signed in the presence of a commissioned notary public of this state. The declaration of applicant shall be in the following form:

I, _____ (name of applicant), do solemnly swear or affirm under penalty of perjury that the personal information I have written in this application is true, complete, and correct.

(Signature of applicant)

State of _____

County of _____

On this _____ day of _____, _____, before me appeared, _____, the person who signed the preceding declaration of applicant in my presence and who swore or affirmed that _____ (he/she) _____ understood the document and freely declared it to be truthful.

(Official signature of the notary)
(Official seal of the notary)

(Code 1981, § 45-17-2.1, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, §§ 2, 3; Ga. L. 1986, p. 10, § 45; Ga. L. 1986, p. 1446, § 3; Ga. L. 1999, p. 81, § 45; Ga. L. 2002, p. 415, § 45; Ga. L. 2007, p. 221, § 2/HB 274.)

The 2007 amendment, effective July 1, 2007, redesignated the first sentence of the previously existing provisions of subsection (a) as present paragraph (a)(1) and added the second sentence; added subparagraphs (a)(1)(A) through (a)(1)(D); redesignated the second sentence of the previously existing provisions of subsection (a) and former paragraphs (a)(1) through (a)(3) as present paragraph (a)(2) and subparagraphs (a)(2)(A) through (a)(2)(C), respectively, and added the second sentence in present subparagraph (a)(2)(A); added subparagraph (a)(2)(D); redesignated former paragraphs (a)(4) and (a)(5) as present subparagraphs (a)(2)(E) and (a)(2)(F);

in the introductory language of subsection (b), substituted “initial appointment as a notary public shall also submit the following endorsement and declaration” for “appointment as notary public shall also submit”; and in paragraph (b)(1), in the first sentence, deleted “and” following “at least 18 years old,” near the middle, and inserted “, and who have known the applicant for at least one month” at the end, and in the endorsement form at the end of paragraph (b)(1), inserted “legal”, “I have known the applicant for one month or more.”, and “(Telephone number of endorser)”.

45-17-6. Seal of office.

JUDICIAL DECISIONS

Document lacking seal deemed not notarized. — Mortgageor’s purported affidavit of indigency was found to be invalid as the affidavit was not properly notarized as required by O.C.G.A. § 45-17-6 where the purported signature of the notary lacked a date to indicate that the notary was present at the same time that the affiant signed the document, and it also lacked a notary’s seal, either stamped or embossed, which was required to make the attestation valid. *Hurt v. Norwest*

Mortg., Inc., 260 Ga. App. 651, 580 S.E.2d 580 (2003).
Jury verdict imposing liability on guarantors for a debt of a corporation was reversed where there was no evidence that the guarantors wrote their names on or otherwise signed the guaranty, where a witness’s opinion that the guaranty “appeared” to be executed by the guarantors lacked any basis whatsoever, other than the fact that their names appeared on the signature lines, and where notary attesta-

tion was invalid, if for no other reason, because the guaranty did not contain a notary seal. *Friedrich v. APAC-Georgia, Inc.*, 265 Ga. App. 769, 595 S.E.2d 620 (2004).

Other exceptions. — Unsworn declaration satisfied the requirements of 28 U.S.C. § 1746 because it was in writing and subscribed by the declarant as true

under penalty of perjury; therefore, it was allowed to be used as evidence in opposition to a motion for summary judgment, despite the general rule set forth in O.C.G.A. § 45-17-6, requiring affidavits to contain a proper notarial seal. *Shouse v. Ursitti*, No. 5:05-CV-314 (DF), 2006 U.S. Dist. LEXIS 32409 (M.D. Ga. May 23, 2006).

45-17-8. Powers and duties generally.

JUDICIAL DECISIONS

Notary also signing will as witness. — It was error to grant summary judgment to a caveator in a will contest in which the first of three witnesses signed both as a witness and as a notary. Even if the first witness did not intend to act as a witness, if the first witness and a second witness signed the will in the decedent's presence, then O.C.G.A. § 53-4-20(b), requiring two witnesses, was satisfied even

if a third witness signed outside the decedent's presence; furthermore, although O.C.G.A. § 45-17-8(c)(1) disqualified a witness from also acting as a notary, the first witness's disqualification as a notary was immaterial because the will was not a self-proving one requiring a notary. *Land v. Burkhalter*, 283 Ga. 54, 656 S.E.2d 834 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1A Am. Jur. Pleading and Practice Forms, Acknowledgments, § 2.

45-17-11. Fees of notaries.

JUDICIAL DECISIONS

No private civil cause of action could be implied. — In response to certified questions from a federal action, a private civil cause of action could not be implied to remedy a violation of O.C.G.A. § 45-17-11; the question arose with respect to a mortgagee's charges that included substantial notary fees with respect to a refinancing transaction. *Anthony v. Am. Gen. Fin. Servs.*, 287 Ga. 448, 697 S.E.2d 166 (2010).

District court did not err in concluding that the notary fee statute, O.C.G.A. § 45-17-11, provided borrowers with no private cause of action because Georgia's Supreme Court, in response to a certified question, declared that a private cause of action could not be implied to remedy a violation of § 45-17-11. *Anthony v. Am.*

Gen. Fin. Servs., 626 F.3d 1318 (11th Cir. 2010).

Voluntary payment doctrine not a bar to recovery. — In response to certified questions from a federal action which arose with respect to a mortgagee's charges that included substantial notary fees from a refinancing transaction, it was determined that the voluntary payment doctrine of O.C.G.A. § 13-1-13 did not bar a breach of contract claim based on the excessiveness of the charges, as there was sufficient artifice, deception, or fraudulent practice by the mortgagee's misrepresentation under O.C.G.A. § 45-17-11(d) that the charges were "reasonable and necessary." *Anthony v. Am. Gen. Fin. Servs.*, 287 Ga. 448, 697 S.E.2d 166 (2010).

No tolling of limitation period. — In

response to certified questions from a federal action which arose with respect to a mortgagee's charges that included substantial notary fees from a refinancing transaction, it was determined that even if there was actual fraud by the mortgagee, there was no tolling of limitations periods for claims of fraud and money had and received pursuant to O.C.G.A. §§ 9-3-25 and 9-3-31, as the mortgagors could have discovered the impropriety of the notary fees by simple reference to O.C.G.A. § 45-17-11. *Anthony v. Am. Gen. Fin. Servs.*, 287 Ga. 448, 697 S.E.2d 166 (2010).

Corporation that employed notaries public not liable. — In response to certified questions from a federal action,

and under the plain and unambiguous language of Georgia's notary statute, a corporation employing notaries public was not subject directly to O.C.G.A. § 45-17-11, and the corporation was not subject to vicarious liability for a violation thereof, although the corporation could still be held liable if the corporation procured or otherwise qualified as a party to or participant in such a violation by a notary pursuant to O.C.G.A. § 51-12-30; the question arose with respect to a mortgagee's charges that included substantial notary fees with respect to a refinancing transaction. *Anthony v. Am. Gen. Fin. Servs.*, 287 Ga. 448, 697 S.E.2d 166 (2010).

45-17-13. Change of residence, address, or name.

(a) Every notary public shall notify in writing the appointing clerk of superior court and provide a copy of such notice to the Georgia Superior Court Clerks' Cooperative Authority of any change in the notary's residence or business address, whichever was used for the purpose of appointment, and of any change in the notary's telephone number. The notice shall contain both the old and new addresses and must be received by the clerk of superior court within 30 days of the change.

(b)(1) Every notary public shall notify in writing the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, of any change in the notary's name. The notice shall contain both the old and new names, the new signature, and any new address and must be received by the clerk of superior court within 30 days of the change.

(2) A notary with a new name may begin to officially sign the new name on notarial certificates when the following steps have been completed:

(A) The notice described in paragraph (1) of this subsection has been received by the appointing clerk of superior court;

(B) A confirmation of the notary's name change has been received from the appointing clerk of superior court; and

(C) A new seal bearing the new name exactly as indicated in the confirmation has been obtained. (Code 1981, § 45-17-13, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3; Ga. L. 2007, p. 221, § 3/HB 274; Ga. L. 2008, p. 324, § 45/SB 455.)

The 2007 amendment, effective July 1, 2007, in subsection (a), substituted “and provide a copy of such notice” for “, with a copy”, and inserted “, and of any change in the notary’s telephone number”.

The 2008 amendment, effective May 12, 2008, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

45-17-20. Penalty; prosecution of violations of article.

(a) Any person who violates subsection (d) of Code Section 45-17-8 shall be guilty of a misdemeanor.

(b) Any person who performs any notarial service without complying with the provisions of this article shall, upon the first or second conviction, be guilty of a misdemeanor and upon a third or subsequent conviction be guilty of a felony, punishable by imprisonment of not less than one year nor more than five years, a fine of up to \$5,000.00, or both. (Code 1981, § 45-17-20, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 2007, p. 221, § 4/HB 274.)

The 2007 amendment, effective July 1, 2007, rewrote subsection (b).
Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2007, “of” was substituted for “or” following “guilty” in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 45-17-20 are designated as offenses for

which those charged are to be fingerprinted. 2008 Op. Att’y Gen. No. 2008-1.

CHAPTER 18

EMPLOYEES’ INSURANCE AND BENEFITS PLANS

Article 1

State Employees’ Health Insurance Plan and Post-employment Health Benefit Fund

PART 1

STATE EMPLOYEES’ HEALTH INSURANCE PLAN

- Sec.
- 45-18-1. Definitions.
 - 45-18-2. Authority to establish health insurance plan; rules and regulations; provisions of plan generally; coverage for retiring or retired employees.
 - 45-18-5. County officers and employees.

- Sec.
- 45-18-5.1. Licensed blind or otherwise seriously disabled vendors.
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 - 45-18-6. Authorization of contracts to provide insurance benefits; invitation of proposals from insurers; reinsurance agreements; issuance of certificates of coverage; redetermination of contracts; discontinuance of contracts or establishment of self-insurance plans; contracts for administrative services; contracts with health maintenance organizations.

Sec.

- 45-18-7.1. Employees of the Georgia Development Authority.
- 45-18-7.2. Agrirama Development Authority employees [Repealed].
- 45-18-7.3. Employees of Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia, spouses, and dependent children.
- 45-18-7.5. Employees of Georgia Housing and Finance Authority, spouses, and dependent children.
- 45-18-7.6. Employees of Georgia-Federal State Inspection Service, spouses, and dependent children.
- 45-18-7.7. Employees and dependents of critical access hospitals in health plans.
- 45-18-7.8. Health insurance plans for employees of Georgia Student Finance Authority.
- 45-18-9. Right of continuation of coverage for spouse or dependents of deceased employees; right to resumption of coverage; payment of contributions; promulgation of rules and regulations as to continuance, discontinuance, and resumption of coverage.
- 45-18-10. Right of continuation of coverage for former employees; payment of premiums; establishment of terms and conditions by board; appointment as United States attorney.
- 45-18-12. Creation of health insurance fund; amounts credited to fund; special reserve; administrator and custodian of fund.
- 45-18-13. Deposit of amounts from health insurance fund available for investment in trust account; investment of funds; withdrawal of funds from trust account.
- 45-18-14. Deductions from compensation and benefit payments of share of cost of coverage un-

Sec.

- 45-18-15. Rules and regulations for administration of part; board to recommend to General Assembly schedule of maximum fees for hospitals and practitioners.
- 45-18-16. Certification to departments and other entities of the state of employer payment percentage for ensuing fiscal year; provision in budgets for funds for employer payments.
- 45-18-17. All employees to become members of plan unless coverage rejected or waived; withdrawal from plan by persons covered by Social Security medical care.
- 45-18-18. Discharge of certain debts or obligations due health insurance fund.
- 45-18-20. Fiscal note required for bills impacting employees' health insurance plans.
- 45-18-21. Deposit of employer and retiree contributions into the Georgia Retiree Health Benefit Fund.

PART 2

STATE EMPLOYEES POST-EMPLOYMENT HEALTH BENEFIT FUND

- 45-18-24. Definitions.
- 45-18-25. Creation of Georgia State Employees Post-employment Health Benefit Fund; identification and transfer of funds from Georgia Retiree Health Benefit Fund; how funds used.
- 45-18-25.1. Responsibilities and procedures for fund operation; rules and regulations; employment of personnel and professionals; maintenance of records; collection of moneys; report.

- Sec.
- 45-18-26. Technical advice; annual actuarial valuations.
- 45-18-27. Control of fund by commissioner; obligations to be paid from fund; investment powers; prohibition against personal interest.
- 45-18-28. Minimum annual required contributions; employer responsibilities.

Article 2

Deferred Compensation Plans

- 45-18-32. Administration of plans; participation by employees of county boards of health, school systems, Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund; provision in plans for income tax deferral benefits.
- 45-18-33. Payments from deferred compensation funds for purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from deferral; custodian of assets of the fund.
- 45-18-35. Plans to operate without cost to state, counties, cities, or other political subdivisions.
- 45-18-37. Special pay plan for deferred payment of special compensa-

- Sec.
- 45-18-38. Board of Trustees of the Employees' Retirement System to be the successor to the State Personnel Board and Employee Benefit Council for administration of deferred compensation plans; employment of and contracting with agents.

Article 3

Employee Benefit Plan Council

- 45-18-50. Definitions.
- 45-18-51. Creation of council; membership, terms of office, and vacancies; compensation and expense reimbursement; officers; executive secretary and staff support; meetings; adoption of procedures; promulgation of rules and regulations.
- 45-18-55. Commissioner of administrative services as executive officer and custodian.

Article 4

Capitol Hill Day-care Center

- 45-18-70. Establishment and operation.
- 45-18-72. Start-up costs.

Article 6

Retiree Health Benefit Fund

- 45-18-100 through 45-18-105 [Repealed].

ARTICLE 1

STATE EMPLOYEES' HEALTH INSURANCE PLAN AND POST-EMPLOYMENT HEALTH BENEFIT FUND

PART 1

STATE EMPLOYEES' HEALTH INSURANCE PLAN

Editor's notes. — Ga. L. 2009, p. 49, § 2, effective April 21, 2009, designated the existing Code sections in this article (§§ 45-18-1 through 45-18-21) as Part 1 of this article.

45-18-1. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Community Health established under Chapter 2 of Title 31.

(1.1) "Commissioner" means the commissioner of community health.

(2) "Employee" means:

(A) A person who works full time for the state and receives his compensation in a direct payment from a department, agency, or institution of state government; provided, however, that such term shall not include specially classified maintenance and food service employees of the Jekyll Island—State Park Authority hired on or after July 1, 1987, and paid on an hourly basis;

(B) An annuitant who at the time of his or her retirement worked full time for the state and received his or her compensation in a direct payment from a department, agency, or institution of state government and who draws a monthly benefit from the Employees' Retirement System of Georgia or the Georgia Judicial Retirement System;

(C) A person who is appointed to an emeritus position under the laws of this state;

(D) Members of the General Assembly;

(E) Administrative and clerical personnel of the General Assembly;

(F) District attorneys of the superior courts of this state;

(G) Assistant district attorneys of the superior courts of this state who are appointed pursuant to Code Section 15-18-14 and district attorneys' investigators appointed pursuant to Code Section 15-18-14.1;

(H) A person who works full time and receives his compensation in a direct payment from a county board of health or the county boards of health comprising a health district or the county boards of health receiving financial assistance from the Department of Public Health;

(I) An annuitant who at the time of his retirement worked full time and received his compensation in a direct payment from a county board of health or the county boards of health comprising a health district or the county boards of health receiving financial assistance from the Department of Public Health;

(J) A county employee who works full time for a county department of family and children services and who receives his compensation from a county department of family and children services;

(K) An annuitant who at the time of his retirement was a county employee who worked full time for a county department of family and children services and who received his compensation in a direct payment from a county department of family and children services and who draws a monthly benefit from either the Employees' Retirement System of Georgia or a county employees' retirement system;

(L) Secretaries employed by district attorneys and by judges of the superior courts and law clerks employed by judges of the superior courts under Code Sections 15-6-25 through 15-6-28 and Code Sections 15-18-17 through 15-18-19.

(3) "Person who works full time" means an individual who works at least 30 hours per week and whose employment is intended to be a continuing employment. This would exclude any student, seasonal, intermittent, or part-time employment. This would also exclude employment intended for only a very limited duration. Notwithstanding this definition or any other provision of this part, the board may, by regulation, make available to employees who work 17 1/2 hours or more per week such benefits as are required to be made available to such employees by regulations of the United States Internal Revenue Service or any other federal authority.

(4) "Professional claim administrators" means any person, firm, or corporation which has at least two years' experience in the handling of insurance claims and which the board has determined to be fully qualified, financially sound, and capable of meeting all of the service requirements of the contract of administration under such criteria as may have been established by appropriate rules and regulations promulgated by the board after due notice and hearing as required by law. (Ga. L. 1961, p. 147, §§ 1, 2, 6; Ga. L. 1962, p. 51, § 1; Ga. L. 1963, p. 277, § 1; Ga. L. 1975, p. 65, § 1; Ga. L. 1975, p. 1506, § 6; Ga. L. 1976, p. 1384, § 1; Ga. L. 1977, p. 884, § 1; Ga. L. 1979, p. 667, § 1; Ga. L. 1980, p. 455, § 3; Ga. L. 1980, p. 966, § 1; Ga. L. 1981, p. 425, § 1; Ga. L. 1987, p. 1035, § 1; Ga. L. 1987, p. 1337, § 2; Ga. L. 1989, p. 1148, § 1; Ga. L. 1999, p. 296, § 15; Ga. L. 2000, p. 1201, § 1; Ga. L. 2009, p. 453, §§ 1-4, 1-7/HB 228; Ga. L. 2010, p. 878, § 45/HB 1387; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Chapter 2 of Title 31" for "Chapter 5A of Title 31" in paragraph (1); and substituted "Department of Community Health" for "Department of

Human Resources" in subparagraphs (2)(H) and (2)(I).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this

part" for "this article" in the last sentence of paragraph (3).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in subparagraphs (2)(H) and (2)(I).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2009, "this part" was substituted for "this article" in the introductory language of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

45-18-2. Authority to establish health insurance plan; rules and regulations; provisions of plan generally; coverage for retiring or retired employees.

(a) The board is authorized to establish a health insurance plan for employees of the state and to adopt and promulgate rules and regulations for its administration, subject to the limitations contained in this part. The health insurance plan may provide for group hospitalization and surgical and medical insurance against the financial costs of hospitalization, surgery, and medical treatment and care and may also include, among other things, prescribed drugs, medicines, prosthetic appliances, hospital inpatient and outpatient service benefits, dental benefits, vision care benefits, and medical expense indemnity benefits, including major medical benefits.

(b) If a retiring or retired employee or the beneficiary of such retiring or retired employee exercises eligibility under board regulations to continue coverage under the plan and the retiring or retired employees or the beneficiary is eligible to participate in the insurance program operated by or on behalf of the federal government under the provisions of 42 U.S.C.A. 1395, as amended, the coverage available under the health insurance plan shall be subordinated to the coverage available under such federal program. The board is authorized to promulgate regulations to establish the premium paid by the retired employee or beneficiary to reflect the subordination of coverage. (Ga. L. 1961, p. 147, § 3; Ga. L. 1980, p. 966, § 1; Ga. L. 1989, p. 1148, § 2; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" in the first sentence of subsection (a).

Law reviews. — For article, "Must

Government Contractors 'Submit' to Their Own Destruction?: Georgia's Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia Department of Community Health," see 60 Mercer L. Rev. 825 (2009).

45-18-5. County officers and employees.

(a) The board is authorized to contract with the various counties of this state for the inclusion of the employees of any county within any health insurance plan or plans established under this part. The various

counties of this state are authorized to contract with the board as provided in this Code section. In the event that any such contract is entered into, it shall be the duty of any counties so contracting to deduct from the salary or other compensation of its employees such payment as may be required under any health insurance plan and to remit the same to the board for inclusion in the health insurance fund. In addition, it shall be the duty of such county or counties to make the employer contributions required for the operation of such plan or plans. Should such county or counties fail to remit such deductions or such employer contributions, the commissioner may, upon written notice to such county or counties, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted.

(b) County officials may elect to be included in a health insurance plan, health maintenance organization, or other health benefits plan offered or provided by a county for its county officials or any health plan or plans established under this part. The governing authority of a county may elect by majority vote to provide for payment in a uniform manner of any portion, all, or none of the employer contributions for or required premiums or payments due from the county officials or former county officials who under this Code section are eligible for inclusion in the health plan or plans established under this part. The board is authorized to contract with the County Officers Association of Georgia on behalf of the various counties of this state for the inclusion in any health insurance plan or plans established under this part of officials, spouses, and dependents of officials serving in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority and officials, spouses, and dependents of officials leaving office on or after December 31, 1996, who have served at least 12 years in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority. The County Officers Association of Georgia is authorized to contract with the board as provided in this Code section. In the event that such a contract is entered into, it shall be the duty of the County Officers Association of Georgia to collect from the various counties of this state with which it has contracted under this subsection and remit to the board such payment as may be required under any health insurance plan for inclusion in the health insurance fund. The County Officers

Association of Georgia may add a reasonable fee to the premiums required under the plan to cover necessary administrative costs. In addition, it shall be the duty of the County Officers Association of Georgia to maintain and remit to the board accurate records of official, dependent, and other information required by the board to administer this Code section. Should the County Officers Association of Georgia fail to remit such payment, the commissioner may, upon written notice to the County Officers Association of Georgia, terminate the coverage for such officials as of the day following the last day for which such payment was remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted.

(c) The various counties of this state are authorized to contract with the County Officers Association of Georgia for the inclusion in any health insurance plan or plans established under this part of officials, spouses, and dependents of officials serving in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority and officials, spouses, and dependents of officials leaving office on or after December 31, 1996, who have served at least 12 years in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority. The County Officers Association of Georgia is authorized to contract with the various counties of the state as provided in this Code section. In the event that any such contracts are entered into, it shall be the duty of any counties so contracting to deduct from the salary or other compensation of its officials and otherwise collect from former officials such payment as may be required under any health insurance plan and to remit the same to the County Officers Association of Georgia for payment to the board. To the extent employer contributions are not fully made by a county, it shall be the duty of the covered officials and former officials to make such employer contributions required on their behalf for the operation of such plan or plans. Should the County Officers Association of Georgia fail to remit such payment, the commissioner may, upon written notice to the County Officers Association of Georgia, terminate the coverage for such officials as of the day following the last day for which such payment was remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted.

(c.1) Any local board of education may elect for members thereof and their spouses and dependents to be included in any health plan or plans

established under Code Section 20-2-918. It shall be the duty of any local boards of education so electing to deduct from the salary or other compensation of its members such payment as may be required under paragraph (1) of subsection (b) of Code Section 20-2-55 and to remit the same to the health insurance fund created under Code Section 20-2-918. Should any local board of education fail to remit such payment to the board, the provisions of subsection (b) of Code Section 20-2-920 shall be applicable to such nonpayment.

(d) In administering this Code section, it shall be the responsibility of the board to develop rates for coverage based on the actual claims experience of the individuals covered by this Code section. The board shall require a bond satisfactory to the commissioner to assure the contractual performance of any entities with which it contracts under this Code section.

(e) Nothing in this Code section shall preclude the exercise of any options or rights otherwise available to such county officers or members of local boards of education under other state or federal laws which relate to extension or continuation of health benefits. (Ga. L. 1972, p. 726, § 1; Ga. L. 1997, p. 857, § 1; Ga. L. 1998, p. 128, § 45; Ga. L. 1999, p. 81, § 45; Ga. L. 1999, p. 813, § 2; Ga. L. 2001, p. 1071, § 2; Ga. L. 2002, p. 841, § 2; Ga. L. 2006, p. 188, § 1/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, added the last two sentences at the end of subsections (a) through (c); added the last sentence in subsection (c.1); and inserted "satisfactory to the commissioner" in the last sentence of subsection (d).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" in the first sentence of subsection (a), in the first three sentences of subsection (b), and in the first sentence of subsection (c).

45-18-5.1. Licensed blind or otherwise seriously disabled vendors.

The Georgia Vocational Rehabilitation Agency is authorized to contract with the Georgia Cooperative Services for the Blind, Inc., a nominee agent designated by the Georgia Vocational Rehabilitation Agency, for the inclusion of licensed blind persons or other persons with disabilities operating a vending facility in accordance with Article 2 of Chapter 9 of Chapter 49 within any health insurance plan or plans established under this part. In the event any contract is entered into, it shall be the duty of the Georgia Cooperative Services for the Blind, Inc., to deduct the payment required under the plan from the earnings or other compensation of licensed blind persons or other persons with disabilities and remit it to the Georgia Vocational Rehabilitation Agency for inclusion in the health insurance fund. In addition, it shall be the duty of the Georgia Cooperative Services for the Blind, Inc., to

make the employer contributions required for the operation of such plan or plans. Should the Georgia Cooperative Services for the Blind, Inc., fail to remit such deductions or such employer contributions through the Georgia Vocational Rehabilitation Agency, the board may, upon written notice to the Georgia Cooperative Services for the Blind, Inc., terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted. (Ga. L. 1981, p. 120, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 2000, p. 1137, § 7; Ga. L. 2006, p. 188, § 2/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387; Ga. L. 2012, p. 303, §§ 3, 7/HB 1146.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" at the end of the first sentence.

The 2012 amendment, effective July 1, 2012, substituted "Georgia Vocational Rehabilitation Agency" for "Department of

Labor" throughout this Code section; in the first sentence, near the middle, substituted "Georgia Vocational Rehabilitation Agency" for "Division of Rehabilitation Services of the Department of Labor", and, near the end, substituted "Article 2 of Chapter 9 of Title 49" for "Article 2 of Chapter 15 of Title 34"; and substituted "board" for "commissioner" in the middle of the next-to-last sentence.

45-18-5.2. Sheltered employment center employees.

The board is authorized to contract with public and private nonprofit sheltered employment centers which contract with or employ persons within the Georgia Vocational Rehabilitation Agency and the Department of Behavioral Health and Developmental Disabilities for the inclusion of employees working in the sheltered employment centers within any health insurance plan or plans established under this part. The board is authorized to adopt regulations for entering into any contract. In the event any contract is entered into, it shall be the duty of the sheltered employment center to remit any funds that may be deducted from the earnings or other compensation of such sheltered employees for inclusion in the health insurance fund. In addition, it shall be the duty of the sheltered employment center to make the employer contributions required for the operation of such plan or plans. Should the sheltered employment center fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to the sheltered employment center, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted. (Code 1981, § 45-18-5.2, enacted by Ga. L. 1984, p. 720, § 1; Ga. L. 1988, p.

13, § 45; Ga. L. 2000, p. 1137, § 2; Ga. L. 2002, p. 1324, § 1-21; Ga. L. 2006, p. 188, § 3/HB 1372; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2010, p. 878, § 45/HB 1387; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

The 2009 amendment, effective July 1, 2009, substituted "Department of Behavioral Health and Developmental Disabilities" for "Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources" in the first sentence in this Code section.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" at the end of the first sentence.

The 2012 amendment, effective July 1, 2012, substituted "Georgia Vocational Rehabilitation Agency" for "Division of Rehabilitation Services of the Department of Labor" in the first sentence of this Code section.

45-18-6. Authorization of contracts to provide insurance benefits; invitation of proposals from insurers; reinsurance agreements; issuance of certificates of coverage; retermination of contracts; discontinuance of contracts or establishment of self-insurance plans; contracts for administrative services; contracts with health maintenance organizations.

(a) The board is authorized to execute a contract or contracts to provide the benefits under the plan of health insurance benefits determined upon in accordance with this part. Such contract or contracts may be executed with one or more corporations licensed to transact accident and health insurance business in this state. All of the benefits to be provided under this part may be included in one or more similar contracts or the benefits may be classified into different types, with each type included under one or more similar contracts issued by the same or different companies. A reasonable time before entering into any insurance contract provided for in this Code section, the board shall invite proposals from such qualified insurers as in the opinion of the board would desire to accept any part of the insurance coverage authorized by this part.

(b) The board may arrange with any corporation licensed to transact accident and health insurance business in this state, which corporation issued any such contract, to reinsure portions of such contract with any other such corporation which elected to be a reinsurer and is legally competent to enter into a reinsurance agreement. The board may designate one or more of such corporations as the administering corporation or corporations. Each employee who is covered under any such contract or contracts shall receive a certificate setting forth the benefits to which the employee and his dependents are entitled thereunder, stating to whom such benefits shall be payable, stating to whom claims should be submitted, and summarizing the provisions of the

contract principally affecting the employee and his dependents. Such certificate shall be in lieu of the certificate which the corporation or corporations issuing such contract or contracts would otherwise issue. The corporations eligible to participate as reinsurers, and the amount of coverage under the contract or contracts to be allocated to each issuing corporation or reinsurer, may be redetermined by the board for and in advance of any contract year after the first year and with any modifications thereof it deems appropriate to carry out the intent of reinsuring portions of the coverage, subject to such limitations as set forth in this part. At the end of any contract year the board may discontinue any contract or contracts it has executed with any corporation or corporations and replace it or them with a contract or contracts with any other corporation or corporations meeting the requirements of this Code section; or the board may, at its discretion, establish a self-insured plan in whole or in part.

(c) Notwithstanding any other provision of this part to the contrary, the board is authorized to execute a contract or contracts with one or more insurers authorized to transact accident and sickness insurance in this state or with one or more hospital service nonprofit corporations, nonprofit medical service corporations, or health care corporations or with one or more professional claim administrators authorized or licensed to transact business in this state or with one or more independent adjusting firms with employees who are licensed as independent adjusters pursuant to Article 1 of Chapter 23 of Title 33 to provide administrative services in connection with a self-insured health insurance plan for state employees.

(d) The board may contract with any health maintenance organization qualified to conduct business in this state pursuant to Chapter 21 of Title 33, relating to health maintenance organizations, which organization provides evidence that it is qualified to operate as a health maintenance organization in accordance with the rules and regulations issued by the secretary of the Department of Health and Human Services of the United States; or the board may contract with any other corporation licensed under Title 33, which corporation is authorized by law to provide the same types of benefits which are provided by such health maintenance organizations. (Ga. L. 1961, p. 147, § 6; Ga. L. 1976, p. 1384, § 1; Ga. L. 1977, p. 884, § 1; Ga. L. 1980, p. 966, § 1; Ga. L. 1993, p. 91, § 45; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" three times in subsection (a), at the end of the next-to-last sentence in subsection (b), and in the first sentence of subsection (c).

Law reviews. — For article, "Must Government Contractors 'Submit' to Their Own Destruction?: Georgia's Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia Department of Community Health," see 60 Mercer L. Rev. 825 (2009).

45-18-7.1. Employees of the Georgia Development Authority.

The board is authorized to contract with the Georgia Development Authority for the inclusion in any health insurance plan or plans established under this part of the employees and retiring employees of the Georgia Development Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Development Authority to deduct from the salary or other remuneration of its employees such payment as may be required under the board's regulations. In addition, it shall be the duty of the Georgia Development Authority to make the employer contributions required for the operation of such plan or plans. Should the Georgia Development Authority fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to the Georgia Development Authority, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted. (Code 1981, § 45-18-7.1, enacted by Ga. L. 1984, p. 543, § 1; Ga. L. 2006, p. 188, § 4/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" in the first sentence.

The 2010 amendment, effective June

45-18-7.2. Agrirama Development Authority employees.

Reserved. Repealed by Ga. L. 2011, p. 752, § 45(6)/HB 142, effective May 13, 2011.

Editor's notes. — This Code section was based on Code 1981, § 45-18-7.2, enacted by Ga. L. 1987, p. 662, § 1; Ga. L.

2006, p. 188, § 5/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.

45-18-7.3. Employees of Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia, spouses, and dependent children.

The board is authorized to contract with the Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and the Sheriffs' Retirement Fund of Georgia for the inclusion in any health insurance plan or plans established under this part of the employees and retiring employees of said Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia and their spouses and dependent children, as defined by the regulations

of the board. It shall be the duty of said Peace Officers' Annuity Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia to deduct from the salary or other remuneration of their employees such payment as may be required under the board's regulations. In addition, it shall be the duty of said Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia to make the employer contributions required for the operation of such plan or plans. Should the Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, or Sheriffs' Retirement Fund of Georgia fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to the Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, or Sheriffs' Retirement Fund of Georgia, as the case may be, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted. (Code 1981, § 45-18-7.3, enacted by Ga. L. 1988, p. 766, § 1; Ga. L. 1997, p. 857, § 2; Ga. L. 1997, p. 1375, § 1; Ga. L. 2006, p. 188, § 6/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

The 2010 amendment, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" in the first sentence.

45-18-7.5. Employees of Georgia Housing and Finance Authority, spouses, and dependent children.

The board is authorized to contract with the Georgia Housing and Finance Authority for the inclusion in any health insurance plan or plans established under this part of the employees and retiring employees of the Georgia Housing and Finance Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Housing and Finance Authority to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees, retired employees, or dependents as may be required under the board's regulations. In addition, it shall be the duty of the Georgia Housing and Finance Authority to make the employer contributions required for the operation of such plan or plans. Should the Georgia Housing and Finance Authority fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to the Georgia Housing and Finance Authority, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not

previously remitted. (Code 1981, § 45-18-7.5, enacted by Ga. L. 1995, p. 573, § 1; Ga. L. 2006, p. 188, § 7/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in the first sentence.

The 2010 amendment, effective June

45-18-7.6. Employees of Georgia-Federal State Inspection Service, spouses, and dependent children.

The board is authorized to contract with the Georgia-Federal State Inspection Service for the inclusion in any health insurance plan or plans established under this part of the state employees of, retiring employees of, and employees who retired under the Employees’ Retirement System of Georgia on or before July 1, 2000, from the Georgia-Federal State Inspection Service and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia-Federal State Inspection Service to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees or dependents as may be required under the board’s regulations. In addition, it shall be the duty of the Georgia-Federal State Inspection Service to make the employer contributions required for the operation of such plan or plans. Should the Georgia-Federal State Inspection Service fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to the Georgia-Federal State Inspection Service, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted. (Code 1981, § 45-18-7.6, enacted by Ga. L. 2000, p. 1411, § 1; Ga. L. 2001, p. 1032, § 1; Ga. L. 2006, p. 188, § 8/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, added the last two sentences of this Code section.

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in the first sentence.

The 2010 amendment, effective June

45-18-7.7. Employees and dependents of critical access hospitals in health plans.

(a) The board is authorized to contract with any public or nonprofit critical access hospital that meets such requirements as the department may establish for the inclusion of the employees and dependents of such critical access hospitals in any health plan established under

this part. It shall be the duty of such critical access hospital to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees as may be required under the board's regulations. In addition, it shall be the duty of such critical access hospital to make the employer contributions required for the operation of such plan. Should any critical access hospital fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to such critical access hospital, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted.

(b) The board is authorized to contract with any federally qualified health center, as defined in Section 1395x(aa)(4) of Title 42 of the United States Code Annotated, that meets such requirements as the department may establish for the inclusion of the employees and dependents of such federally qualified health centers in any health plan established under this part. It shall be the duty of the federally qualified health center to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees as may be required under the board's regulations. In addition, it shall be the duty of such federally qualified health center to make the employer contributions required by the board for the operation of such plan. The department shall make a determination, no later than January 1, 2005, as to whether a federally qualified health center is an agency or instrumentality of the State of Georgia. In the event that the department determines that such centers are agencies or instrumentalities of the State of Georgia, then all employees and dependents of such centers shall be eligible for inclusion in the state employees' health insurance plan. Should any such federally qualified health center fail to remit such deductions or such employer contributions to the board, the commissioner may, upon written notice to such federally qualified health center, terminate the coverage for such employees as of the day following the last day for which such deductions or such employer contributions were remitted to the board. Coverage may be reinstated upon the tender of any such deductions or employer contributions not previously remitted.

(c) The authority granted to the board pursuant to Code Sections 45-18-5.1, 45-18-5.2, 45-18-7.1, 45-18-7.3, 45-18-7.5, and 45-18-7.6; by this Code section; or by any other provision of this part may be exercised only upon a determination by the department that the employer is an agency or instrumentality of the State of Georgia or, if the department determines that such entities are not agencies or instrumentalities of the State of Georgia, then employees and dependents of such entities may be included in the state employees' health

insurance plan up to the point that such health plan would not be able to retain its exempt status under the federal Employee Retirement Income Security Act of 1974. (Code 1981, § 45-18-7.7, enacted by Ga. L. 2001, p. 1240, § 6-1; Ga. L. 2004, p. 444, § 3; Ga. L. 2006, p. 188, § 9/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387; Ga. L. 2011, p. 752, § 45/HB 142.)

The 2004 amendment, effective July 1, 2004, designated the existing provisions as subsection (a) and added subsections (b) and (c).

The 2006 amendment, effective July 1, 2006, added the last two sentences in subsections (a) and (b).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” at the end of the first sentences of subsections (a) and (b), and in subsection (c).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “45-18-7.2,” following “45-18-7.1,” in subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “45-18-7.6; by this Code section,” was substituted for “45-18-7.6, by this Code section,” in subsection (c).

Editor’s notes. — Ga. L. 2004, p. 444, § 1, not codified by the General Assembly,

provides that: “The General Assembly finds that federally qualified health centers, as defined in Section 1395x(aa)(4) of Title 42 of the United States Code Annotated, promote and preserve the provision of primary care to the residents of Georgia, particularly residents in rural areas of Georgia. Steps must be taken to promote the continued existence of the federally qualified health centers in order to promote the availability of primary health care to Georgia’s rural citizens.”

Ga. L. 2004, p. 444, § 2, not codified by the General Assembly, provides that: “The General Assembly further finds that the state employees’ health insurance plan is a governmental plan exempt from the regulatory requirements of the Employee Retirement Income Security Act of 1974 and declares that it is the public policy of the State of Georgia that the Board of Community Health take all steps necessary and proper to ensure that said exemption is retained by the state.”

45-18-7.8. Health insurance plans for employees of Georgia Student Finance Authority.

The board is authorized to contract with the Georgia Student Finance Authority for the inclusion in any health insurance plan or plans established under this part of the employees of the Georgia Student Finance Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Student Finance Authority to deduct from the salary or other remuneration of its employees such payment as may be required under the board’s regulations. In addition, it shall be the duty of the Georgia Student Finance Authority to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.8, enacted by Ga. L. 2010, p. 858, § 1/SB 363.)

Effective date. — This Code section became effective July 1, 2010.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2010, “this part” was substituted for “this article” in the first sentence of this Code section.

45-18-9. Right of continuation of coverage for spouse or dependents of deceased employees; right to resumption of coverage; payment of contributions; promulgation of rules and regulations as to continuance, discontinuance, and resumption of coverage.

(a) At the time of death of any employee, annuitant, or other person who is the primary or principal beneficiary of said contract or contracts for health insurance and who dies on or after March 1, 1966, having at least 13 years and four months of creditable service as determined pursuant to Chapter 2 of Title 47, any spouse or dependent child or children included in the coverage of the contract or contracts for health insurance as provided in this part may be entitled to continue such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board shall be authorized to promulgate and adopt rules and regulations governing the continuance, discontinuance, and resumption of coverage by any such spouse or dependent child or children.

(b) At the time of death of any employee, annuitant, or other person who was the primary or principal beneficiary of said contract or contracts for health insurance and who died during the period from July 1, 1962, to and including April 30, 1966, any spouse or dependent child or children included in the coverage of the contract or contracts for health insurance as provided in this part may be entitled to resume such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board may promulgate and adopt rules and regulations governing the resumption, continuance, and discontinuance of coverage by any such spouse or dependent child or children.

(c) At the time of death of any employee, annuitant, or other person who is the primary or principal beneficiary of said contract or contracts for health insurance pursuant to Chapter 8 of Title 47, or as determined pursuant to Chapter 9, 12, or 13 of Title 47, any annuitant included in the coverage of the contract or contracts for health insurance as provided in this part may be entitled to continue such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board shall be authorized to promulgate and adopt rules and regulations governing the continuance, discontinuance, and resumption of coverage by any such spouse or dependent child or children.

(d) The surviving spouse and covered dependents of any retired employee who are included in the contract or contracts for health insurance coverage under this part shall be eligible to continue such coverage after the death of the retired employee upon agreeing to pay

employee premiums for such coverage in accordance with the rules and regulations of the board. The board is authorized and directed to promulgate and adopt rules and regulations governing the continuance, discontinuance, or resumption of coverage by any such surviving spouse and covered dependents. This subsection shall not apply unless the parties have been married at least one full year prior to the death of the retired employee; and coverage shall cease for the covered spouse upon the occurrence of any event, other than the death of the retired employee, which would render the surviving spouse ineligible for continued coverage under the contract. For purposes of the immediately preceding sentence relating to covered spouses, the remarriage of the surviving spouse shall be considered to be the same as a divorce from the retired employee for purposes of determining the spouse's eligibility.

(e) If any employee of this state is killed while acting within the scope of his or her employment or receives bodily injury while acting within the scope of his or her employment that directly results in death thereafter, eligible dependents may continue coverage, provided that:

(1) The deceased employee was the primary or principal beneficiary of any contract or contracts for health insurance established under this part;

(2) At the time of death, the employee included his or her eligible dependents under such contract or contracts for health insurance;

(3) At the time of death, the employee maintained continuous coverage during the period between injury and death;

(4) The eligible dependents agree to pay the contributions to the cost of such coverage; and

(5) The eligible dependents pay such contributions in accordance with the rules and regulations promulgated and adopted by the board governing the continuance, discontinuance, and resumption of coverage by such eligible dependents; provided, however, that, on and after May 11, 2011, any eligible dependents of a deceased employee of this state killed in the line of duty who are receiving continued coverage or who elect to continue coverage pursuant to this subsection shall be entitled to continue such coverage under the health insurance plan established pursuant to this part upon agreeing to pay contributions at the same rate as required for state employees and in compliance with the rules and regulations governing such coverage. (Ga. L. 1966, p. 279, § 2; Ga. L. 1978, p. 1927, § 1; Ga. L. 1980, p. 9, § 1; Ga. L. 1980, p. 94, § 1; Ga. L. 1981, p. 983, §§ 1, 3; Ga. L. 2000, p. 1411, § 2; Ga. L. 2010, p. 878, § 45/HB 1387; Ga. L. 2011, p. 478, § 1/HB 107.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" in the first sen-

tences of subsections (a) through (d), and in paragraph (e)(1).

The 2011 amendment, effective May 11, 2011, added the proviso at the end of paragraph (e)(5).

Code Commission notes. — Pursuant to Code Section § 28-9-5, in 2011, “May 11, 2011” was substituted for “the effective date of this clause” in paragraph (e)(5).

45-18-10. Right of continuation of coverage for former employees; payment of premiums; establishment of terms and conditions by board; appointment as United States attorney.

(a) Any other provision of this part to the contrary notwithstanding, on and after July 1, 1978, any employee who resigns from employment or who fails to be reelected or who does not seek reelection to office and who at the time he or she leaves office or employment has completed eight or more years of service as an employee, as defined in Code Section 45-18-1, shall be entitled to continue full coverage and participation, including coverage for his or her spouse and dependent children, in the health insurance plan upon the payment of a monthly premium to be fixed by the board; and, in addition thereto, any member of the General Assembly who ceases to hold office as such at any time after July 1, 1981, and who was eligible to retire at the time of leaving office, except for the attainment of retirement age, pursuant to a public retirement system created by law to which the General Assembly appropriates funds, and who does not withdraw employee contributions from such public retirement system, shall be entitled to continue full coverage and participation, including coverage for the spouse and dependent children of such person, in the health insurance plan by continuing to pay to the board the monthly premium which is paid by an active state employee. The first monthly premium provided for in this Code section must be paid within 30 days following receipt of a notice of premium to be sent to such person by the board. If such premium is not paid within such time limit, such insurance coverage shall be canceled and such person shall not again be eligible to participate in such plan. This Code section shall not affect the rights otherwise available under this part to retired employees and their spouses and dependents. The board is authorized to establish terms and conditions for participation which the board shall deem appropriate and which are not in conflict with this Code section.

(b) Subject to such rules as the office may establish, any district attorney or assistant district attorney who ceases to hold office as such in order to accept appointment as a United States attorney or assistant United States attorney, who was eligible to retire at the time of leaving office, except for the attainment of retirement age, pursuant to a public retirement system created by law to which the General Assembly appropriates funds, and did not withdraw employee contributions from

such public retirement system, who declines coverage under this plan in order to be covered under a health benefit plan available to federal employees, and who ceases to hold such position with the federal government without having vested in any retirement system for federal employees may be permitted to reestablish full coverage and participation, including coverage for the spouse and dependent children of such person, in the health insurance plan by notifying the board within 90 days of ceasing to be employed by the federal government or by August 1, 1998, whichever is later, that he or she desires to resume coverage in the health insurance plan and by paying to the board the monthly premium which is paid by an active state employee.

(c) Any other provision of this part to the contrary notwithstanding, any employee who is injured by an act of inmate violence while he or she is employed as a correctional officer in a correctional facility in this state and is five years or less from becoming eligible for medicare medical coverage shall be exempt from the eight or more years of service requirement and shall be entitled to continue full coverage and participation, including coverage for his or her spouse and dependent children, in the health insurance plan upon the payment of the monthly premium fixed by the board for active state employees. The first monthly premium provided for in this subsection must be paid within 30 days following receipt of a notice of premium to be sent to such person by the commissioner. If such premium is not paid within such time limit, such insurance coverage shall be canceled and such person shall not again be eligible to participate in such plan. (Ga. L. 1978, p. 1927, § 2; Ga. L. 1981, p. 983, § 2; Ga. L. 1998, p. 823, § 1; Ga. L. 2001, p. 1094, § 3; Ga. L. 2006, p. 188, § 10/HB 1372; Ga. L. 2006, p. 1007, § 1/HB 1126; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendments. — The first 2006 amendment, effective July 1, 2006, added subsection (c). The second 2006 amendment, effective May 5, 2006, added subsection (c).

The 2010 amendment, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” twice in subsection (a) and in the first sentence of subsection (c).

45-18-12. Creation of health insurance fund; amounts credited to fund; special reserve; administrator and custodian of fund.

(a) There is created a health insurance fund which shall be available without fiscal year limitations for premium, subscription charge, benefits, and administration costs. The amounts withheld from employees and retired employees under this part, all amounts contributed by the state or from federal funds to such health insurance fund, and all amounts contributed by any state authority pursuant to this part shall be credited to such health insurance fund. All other income, as well as

the income derived from any dividends, premium rate adjustments, or other refunds under any contract or contracts, shall be credited to and constitute a part of such fund. Any amounts remaining in such fund after all premiums or subscription charges and other expenses have been paid shall be retained in such fund as a special reserve for adverse fluctuation. The commissioner of community health shall be executive officer of the Board of Community Health for the administration of this part and custodian of such health insurance fund and shall be responsible under a properly approved bond for all moneys coming into said fund and paid out of said fund as may be required to be paid to any contracting corporation under any contract entered into pursuant to this part and to cover administrative costs.

(b) Notwithstanding any provision of law to the contrary, the commissioner may combine the fund provided for in this Code section with the funds provided for in Code Section 20-2-891 and Code Section 20-2-918. (Ga. L. 1961, p. 147, § 10; Ga. L. 1962, p. 51, § 2; Ga. L. 1999, p. 296, § 23; Ga. L. 2005, p. 623, § 6/SB 284; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2005 amendment, effective July 1, 2005, redesignated the former provisions of this Code section as subsection (a) and added subsection (b).

The 2010 amendment, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" throughout subsection (a).

45-18-13. Deposit of amounts from health insurance fund available for investment in trust account; investment of funds; withdrawal of funds from trust account.

Any amounts held by the health insurance fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit said funds in a trust account for credit only to the health insurance fund. The state treasurer shall invest these health insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from said investments shall accrue to the health insurance fund. When moneys are paid over to the Office of the State Treasurer as provided in this Code section, the commissioner of community health shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner of community health wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal in writing to the state treasurer. (Ga. L. 1974, p. 14, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1999, p. 296, § 23; Ga. L. 1999, p. 592, § 19; Ga. L. 2000, p. 1474, § 7; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, throughout this Code section, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" twice and substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" three times.

45-18-14. Deductions from compensation and benefit payments of share of cost of coverage under plan of employees; payment of contributions to health insurance fund by departments, boards, and agencies of state; coverage of employee appealing discharge.

(a) During any period in which an employee is covered under this part prior to the date of his or her retirement, there shall be withheld from each salary payment or other compensation of such employee, as his or her share of the cost of coverage under this plan, such portion of the premium or subscription charges under the terms of any contract or contracts issued in accordance with this part as may be established by the board. During any month in which benefits are being paid by the Employees' Retirement System of Georgia to an individual so covered under this program, contributions in the amounts prescribed by the board shall be deducted from such payments with the consent of the recipient. The various departments, boards, and agencies of the executive and judicial branches of state government shall contribute to the health insurance fund such portions of the cost of such benefits as may be established by the board and the Governor as funds become available in each department, board, and agency, in addition to an amount to be established by the board to defray the cost of administration and the state's portion of the cost of benefits payable for annuitants. The legislative fiscal officer shall contribute to the health insurance fund as an employer payment for and on behalf of all members of the General Assembly and its administrative and clerical personnel. The Prosecuting Attorneys' Council of the State of Georgia shall contribute to the fund as an employer payment for and on behalf of district attorneys, assistant district attorneys, and other paid state personnel appointed pursuant to Article 1 of Chapter 18 of Title 15. The Council of Superior Court Judges of Georgia shall contribute to the fund as an employer payment for and on behalf of secretaries and law clerks of the superior courts of the state. The amount of such contributions shall be such portions of the costs of such benefits as may be established by the board; and, in addition thereto, an amount to be established by the board shall be contributed to defray the costs of administration. The board shall determine whether such employer portion shall be determined based upon a percentage of the total outlay for personal services or determined on an amount per employee electing coverage under the plan based on the coverage elected, in accordance with the appropriation of funds.

(b) If an employee has been eligible for coverage under the state health insurance plan for a period of ten years and is discharged from employment and the discharge is under appeal to the State Personnel Board, such employee shall be entitled to continue coverage by paying the employee contribution under the health insurance plan until the State Personnel Board has rendered a decision or for a period of six months, whichever is less. (Ga. L. 1961, p. 147, § 11; Ga. L. 1962, p. 51, § 3; Ga. L. 1963, p. 277, § 2; Ga. L. 1970, p. 9, § 1; Ga. L. 1973, p. 332, § 1; Ga. L. 1976, p. 199, § 1; Ga. L. 1979, p. 667, § 3; Ga. L. 1981, p. 425, § 2; Ga. L. 1988, p. 413, § 1; Ga. L. 2005, p. 623, § 7/SB 284; Ga. L. 2008, p. 577, § 20/SB 396; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2005 amendment, effective July 1, 2005, redesignated the first and second paragraphs of this Code section as subsections (a) and (b), respectively and, in subsection (a), deleted “based on a percentage of the total outlay for personal services” following “board, and agency,” in the third sentence, deleted “as a percent of the total outlay of services rendered by members of the General Assembly, its administrative and clerical personnel, and the district attorneys of the superior courts of the state” at the end of the sixth sentence, and added the last sentence.

The 2008 amendment, effective July 1, 2008, in subsection (a), inserted “or her” following “his” twice; inserted “executive and judicial branches of” in the third sentence; in the fifth sentence, substituted

“Prosecuting Attorneys’ Council of the State of Georgia” for “Department of Administrative Services” at the beginning; inserted “, and other paid state personnel” and substituted “Article 1 of Chapter 18 of Title 15” for “Code Section 15-18-14, and” near the end; in the sixth sentence, at the beginning, inserted “The Council of Superior Court Judges of Georgia shall contribute to the fund as an employer payment for and on behalf of”; and deleted “and secretaries employed by district attorneys” following “of the state” at the end.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” twice in the first sentence of subsection (a).

45-18-15. Rules and regulations for administration of part; board to recommend to General Assembly schedule of maximum fees for hospitals and practitioners.

(a) The board shall promulgate such rules and regulations as may be required for the effective administration of this part. Such rules and regulations shall include, but not be limited to, rules and regulations establishing the conditions under which employees who originally rejected coverage may acquire coverage at a later date. The commissioner of community health, as executive officer of the board, shall employ such personnel as may be needed to carry out this part and such employees shall be employees of the Department of Community Health. The pro rata share of the costs of operating the Department of Community Health in the manner prescribed by law shall be a part of the administrative costs of the employees’ health insurance plan.

(b) The board shall investigate fees of hospitals, pharmacists, and practitioners of the healing arts and present recommendations to the

General Assembly by not later than January 15, 1991, for a schedule of maximum fees for hospitals and practitioners of the healing arts. The recommended fees for hospitals shall be determined based upon a statistical analysis of the peer groups adjusted for the intensity of the case mix for hospitals of same licensure classification or subclassification (e.g., general, pediatric, psychiatric, rehabilitation, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(c) The recommended fees for practitioners of the healing arts and pharmacists shall be determined based upon a statistical analysis of the peer groups for such practitioners and pharmacists of the same licensure classification (e.g., internists, family practitioners, cardiologists, neurosurgeons, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(d) The recommendations shall include an analysis of all hospitals, pharmacists, and practitioners accepting assignment of benefits for such services not to exceed the amount authorized by the fee schedule. The board shall publish in print or electronically a list of practitioners that accept assignment of benefits under the plan.

(e) The recommendations shall include an analysis of the impact of practitioners agreeing to provide medical or surgical services at a reduced rate for members of the health insurance plan and of pharmacists and hospitals agreeing to provide hospital services, medical equipment, or pharmaceuticals at a reduced rate for members of the health insurance plan. The board shall publish in print or electronically a list of practitioners of the healing arts, pharmacists, and hospitals that offer a reduced rate for members and the rate at which those services, equipment, or pharmaceuticals have been offered. (Ga. L. 1961, p. 147, § 12; Ga. L. 1962, p. 51, § 4; Ga. L. 1964, p. 196, § 1; Ga. L. 1990, p. 1924, § 3; Ga. L. 1999, p. 296, § 23; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2010 amendments. — The first 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the last sentence of subsections (d) and (e). The second 2010 amendment, effective

June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in the first and third sentences of subsection (a).

45-18-16. Certification to departments and other entities of the state of employer payment percentage for ensuing fiscal year; provision in budgets for funds for employer payments.

Not less than 30 days prior to the commencement of the plan year, the commissioner of community health shall certify to the director or chief administrative officer of each state department, bureau, institution, board, commission, or authority having employees covered by this part the amount of percentage adopted by the board as employer payments for the ensuing fiscal year; and they shall, in their annual budget, make provisions for funds with which to pay the board the required employer payments. (Ga. L. 1961, p. 147, § 14; Ga. L. 1999, p. 296, § 23; Ga. L. 2006, p. 188, § 11/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

The 2006 amendment, effective July 1, 2006, substituted “Not less than 30 days prior to the commencement of the plan year” for “On or before June 1 of each year” at the beginning of this Code section.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in the middle of this Code section.

45-18-17. All employees to become members of plan unless coverage rejected or waived; withdrawal from plan by persons covered by Social Security medical care.

(a) All persons who become state employees as defined in this part and who are eligible as specified in the rules and regulations of the board shall become members of this health insurance program unless the employee rejects or waives such coverage in writing.

(b) Any annuitant or person appointed to an emeritus position or any person eligible to be covered by the medical care for the aged program of the Social Security Administration, which person is included in the coverage of any health insurance plan established as provided in this part, may withdraw from such plan and discontinue his coverage thereunder in such manner as may be provided by rules and regulations promulgated and adopted by the board. In the event any such annuitant or person appointed to an emeritus position withdraws from such plan and discontinues his coverage thereunder, coverage of his spouse and dependent child or children shall likewise be withdrawn and coverage thereunder discontinued. (Ga. L. 1961, p. 147, § 15; Ga. L. 1964, p. 196, § 2; Ga. L. 1966, p. 279, § 3; Ga. L. 1979, p. 667, § 4; Ga. L. 1989, p. 1148, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “this part”

was substituted for “this article” in this Code section.

45-18-18. Discharge of certain debts or obligations due health insurance fund.

(a) It is the purpose of this Code section to authorize a procedure whereby the commissioner of community health may administratively discharge a debt or obligation due the health insurance fund for employees of the state when the amount is \$400.00 or less and:

(1) It is manifest that the debt or obligation is uncollectable; or

(2) The costs of collecting the debt or obligation would be equal to or greater than the amount due the fund.

(b) In order to conserve the health insurance funds, the commissioner of community health is authorized to develop a procedure that complies with the policies prescribed by the state accounting officer for the administrative discharge of any debt or obligation due the insurance fund when such debt or obligation is \$400.00 or less. This provision shall not be construed to deny to the commissioner the authority to pursue the collection of any debt, obligation, or claim in any amount whatsoever when such pursuit is in the best interest of the insurance fund.

(c) Upon a formal determination that a debt or obligation to the insurance fund of \$400.00 or less is uncollectable, or that the costs of collection would equal or exceed the amount due the fund, the commissioner of community health shall execute and transmit to the state accounting officer a certification which includes the following: a recapitulation of the efforts made to collect the debt or obligation; an estimate of the costs to pursue collection of the debt or obligation administratively or judicially; such other information as may be required by the procedure developed by the commissioner and the state accounting officer; and a statement that further collection effort would be detrimental to the financial interests of the fund. The certification shall be made under oath or affirmation and shall be sent to the state accounting officer at such times as shall be prescribed in the procedure developed by the commissioner and the state accounting officer. Upon receipt of the certification, the state accounting officer shall be authorized to approve the removal of such uncollectable amounts from the financial records of the fund. (Code 1981, § 45-18-18, enacted by Ga. L. 1988, p. 397, § 2; Ga. L. 1999, p. 296, § 23; Ga. L. 2005, p. 694, § 37/HB 293.)

The 2005 amendment, effective July 1, 2005, in subsection (b), deleted “, in conjunction with the state auditor,” following “health is authorized” and inserted “that complies with the policies prescribed

by the state accounting officer” following “develop a procedure” in the first sentence; and in subsection (c), substituted “accounting officer” for “auditor” in five places.

45-18-20. Fiscal note required for bills impacting employees' health insurance plans.

Any bill prepared by the General Assembly which would impact the state employees' health insurance plan established under this part shall require a fiscal note in accordance with the procedures of Code Section 28-5-42. (Code 1981, § 45-18-20, enacted by Ga. L. 2006, p. 188, § 12/HB 1372; Ga. L. 2010, p. 878, § 45/HB 1387.)

Effective date. — This Code section became effective July 1, 2006.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modern-

ize, and correct the Code, substituted "this part" for "this article" in the middle of this Code section.

45-18-21. Deposit of employer and retiree contributions into the Georgia Retiree Health Benefit Fund.

Notwithstanding any other provisions of this part, the board shall deposit into the Georgia Retiree Health Benefit Fund created by Code Section 45-18-101 the individual contributions by retirees and the employer contributions respecting retirees provided for by this part. (Code 1981, § 45-18-21, enacted by Ga. L. 2007, p. 77, § 3/SB 172; Ga. L. 2010, p. 878, § 45/HB 1387.)

Effective date. — This Code section became effective July 1, 2007.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "this part" for "this article" twice in this Code section.

Editor's notes. — This Code section formerly pertained to the House Asthma Strategic Planning Study Committee; membership; reports. The former Code section was based on Ga. L. 2006, p. 188, § 12/HB 1372.

PART 2**STATE EMPLOYEES POST-EMPLOYMENT HEALTH BENEFIT FUND**

Effective date. — This part became effective April 21, 2009.

45-18-24. Definitions.

As used in this part, the term:

(1) "Actuarial accrued liability" means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided for by future normal costs.

(2) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting costs of the fund such as

mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other such relevant items.

(3) "Actuarial cost method" means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of such value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(4) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the fund.

(5) "Actuarially sound" means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than 30 years.

(6) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(7) "Annual required contribution" means the amount determined in accordance with requirements of Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(8) "Board" means the Board of Community Health.

(9) "Commissioner" means the commissioner of community health.

(10) "Covered health care expenses" means all actual health care expenses incurred by the health plan on behalf of fund beneficiaries. Actual health care expenses include claims incurred by fund beneficiaries and providers and premiums incurred by intermediary entities and health care providers by the health plan.

(11) "Department" means the Department of Community Health.

(12) "Eligible to participate" means employees of employers who are participating in the health plan and those employees of employers who qualify to participate in the health plan but choose not to do so.

(13) "Employer" means the entity with which the fund beneficiary had the direct, in the case of employees, or indirect, in the case of

dependents, employment relationship that gave rise to the fund beneficiary's eligibility for post-employment health benefits under the health plan.

(14) "Fund" means the Georgia State Employees Post-employment Health Benefit Fund established under this part.

(15) "Fund beneficiaries" means all persons receiving post-employment health care benefits as retirees or derivatively through retirees through the health plan.

(16) "Health plan" means the state employees' health insurance plan established under Part 1 of this article.

(17) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(18) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries less any amounts received by or on behalf of fund beneficiaries.

(19) "State plan for other post-employment benefits" means the State of Georgia fiscal funding plan for retiree post-employment health care benefits as it relates to Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(20) "Unfunded actuarial accrued liability" means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method utilized by the fund for funding purposes. (Code 1981, § 45-18-24, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

45-18-25. Creation of Georgia State Employees Post-employment Health Benefit Fund; identification and transfer of funds from Georgia Retiree Health Benefit Fund; how funds used.

(a) There is created the Georgia State Employees Post-employment Health Benefit Fund to provide for the costs of post-employment health insurance benefits. The fund shall be a trust fund of public funds; the board in its official capacity shall be the fund's trustee; and the commissioner in his or her official capacity shall be its administrator.

(b) On August 31, 2009, the board shall identify the funds held in the Georgia Retiree Health Benefit Fund created by Article 6 of this chapter for the payment of postretirement health benefits for state employees

and shall on that date transfer such funds to the fund created by subsection (a) of this Code section.

(c) The fund shall be available and dedicated without fiscal year limitations for covered health care expenses and administration costs. All employer and fund beneficiary contributions, appropriations, earnings, and reserves for the payment of obligations under this part shall be irrevocably credited to the fund. The amounts remaining in the fund, if any, after such health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for covered health care expenses and administration costs. The board shall determine the time and amounts of distributions from the special reserve for covered health care expenses and administration costs. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose and shall be protected from creditors of the state and the employers. (Code 1981, § 45-18-25, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

45-18-25.1. Responsibilities and procedures for fund operation; rules and regulations; employment of personnel and professionals; maintenance of records; collection of moneys; report.

(a) Responsibility for the proper operation of the fund is vested in the department.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board may adopt any rules and regulations that it finds necessary to properly administer the fund.

(d) The board shall adopt rules and regulations to account for employer contributions and other assets separately.

(e) The commissioner, as executive officer of the board, shall employ such personnel as may be needed to carry out the provisions of this part and such personnel shall be employees of the department. The pro rata share of the costs of operating the department in the manner prescribed by law shall be a part of the administrative costs of the fund.

(f) The department may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this part.

(g) The department shall contract with the Division of Investment Services of the Employees' Retirement System of Georgia for any necessary services with respect to fund investments.

(h) The department shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles, as applicable to the fund.

(i) The department shall collect all moneys due to the fund and shall pay any administrative expenses necessary and appropriate for the operation of the fund from the fund.

(j) The department shall prepare an annual report of fund activities for the board, the House Committee on Appropriations, and the Senate Appropriations Committee. Such reports shall include, but not be limited to, audited financial statements. The reports shall contain the most recent information reasonably available to the department reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate. This report is due September 30 and shall reflect activity on a state fiscal year basis.

(k) Notwithstanding any other provision of law to the contrary, the department shall be entitled to any information that it deems necessary and appropriate from a retirement system in order that the provisions of Code Section 45-18-26 may be carried out. (Code 1981, § 45-18-25.1, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, Code Section 45-18-102, as enacted by Ga. L. 2009, p. 49, § 2, was redesignated as Code Section 45-18-25.1.

45-18-26. Technical advice; annual actuarial valuations.

(a) The actuary employed or retained by the department shall provide technical advice to the department and to the board regarding the operation of the fund.

(b) Utilizing the actuarial assumptions most recently adopted by the board, the actuary shall set annual actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits. (Code 1981, § 45-18-26, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

45-18-27. Control of fund by commissioner; obligations to be paid from fund; investment powers; prohibition against personal interest.

(a) Subject to the supervision of the board, the commissioner shall have control over the fund established by this part. The obligations provided for in this part and all administrative expenses shall be paid from the fund. The department may expend moneys from the fund for any purpose authorized by this part.

(b) Subject to the supervision of the board, the commissioner shall have full power to invest and reinvest its assets, subject to all of the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of Title 47, the "Public Retirement Systems Investment Authority Law" for large retirement systems. Subject to such terms, conditions, limitations, and restrictions, the commissioner shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund. The records maintained by the fund shall have the same exemption from public inspection as that provided in Code Section 47-1-14.

(c) Except as otherwise provided in this part, no member of the board or employee of the department shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, directly or indirectly, except to make such payments as may be authorized by the board or by the commissioner as the executive officer of the board in accordance with this part. (Code 1981, § 45-18-27, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

45-18-28. Minimum annual required contributions; employer responsibilities.

(a) The board shall annually determine the minimum annual required contributions sufficient to maintain the fund in an actuarially sound manner in accordance with Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(b) The board may annually establish required employer contributions to the fund which are supplemental to required employer contributions to the health plans as set forth in Part 1 of this article.

(c) It shall be the responsibility of state agencies to make contributions to the fund, subject to appropriations, in accordance with the employer contribution rate established by the board.

(d) It shall be the responsibility of all other employers to make contributions to the fund in accordance with the employer contribution rates established by the board. (Code 1981, § 45-18-28, enacted by Ga. L. 2009, p. 49, § 2/SB 122.)

ARTICLE 2

DEFERRED COMPENSATION PLANS

45-18-30. "Employee" defined.

Editor's notes. — Ga. L. 2005, p. 134, Code section without change. Refer to § 1, effective July 1, 2005, reenacted this bound volume for text of this Code section.

45-18-31. Deferred compensation plans authorized for state, municipalities, counties, or other political subdivisions.

Editor's notes. — Ga. L. 2005, p. 134, Code section without change. Refer to § 1, effective July 1, 2005, reenacted this bound volume for text of this Code section.

45-18-32. Administration of plans; participation by employees of county boards of health, school systems, Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund; provision in plans for income tax deferral benefits.

The Board of Trustees of the Employees' Retirement System of Georgia shall administer any deferred compensation plan provided for the employees of the state. Employees of the county boards of health receiving financial assistance from the Department of Public Health may, with the approval of the Board of Trustees of the Employees' Retirement System of Georgia and the approval of such organizations, participate in the state plan. Employees of county and independent school systems may, with the approval of the Board of Trustees of the Employees' Retirement System of Georgia and the approval of such systems, participate in the state plan. Employees of the Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund may, with the approval of the Board of Trustees of the Employees' Retirement System of Georgia and the approval of such organizations, participate in the state plan. The Board of Trustees of the Employees' Retirement System of Georgia shall investigate and approve a deferred compensation plan which gives the employees of the state income tax benefits in connection with plans authorized by the United States Internal Revenue Code, so that compensation deferred under such plan shall not be included for purposes of computation of any federal income tax withheld on behalf of any such employee or payable by such employee before any deferred payment date. All contributions to the deferred compensation plan shall also be exempt from state withholding tax as long as such contributions are not includable in gross income for federal income

tax purposes. The governing body of a city, county, or other political subdivision may appoint an administrator for all deferred compensation plans, whose duties shall include the administration of the plan and the investigation and approval of the plan or plans. All such plans shall provide tax deferral benefits for the respective employees in a manner similar to that of the plan for state employees. (Ga. L. 1974, p. 198, § 4; Ga. L. 1981, p. 662, § 1; Ga. L. 2001, p. 1097, § 1; Ga. L. 2002, p. 814, § 1; Ga. L. 2005, p. 134, § 1/HB 275; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2005 amendment, effective July 1, 2005, substituted “Board of Trustees of the Employees’ Retirement System of Georgia” for “State Personnel Board” throughout this Code section.

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in the second sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

45-18-33. Payments from deferred compensation funds for purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from deferral; custodian of assets of the fund.

Notwithstanding any other provision of law to the contrary, in order to carry out the provisions of the deferred compensation plan, the state or any county, municipality, or other political subdivision is authorized to make payments for the purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from the deferral of compensation. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, municipality, or other political subdivision. The Board of Trustees of the Employees’ Retirement System of Georgia or the administrator of the plan shall have the power to arrange for a custodian for the holding of such insurance policies, funds, investments, and other assets of the fund. (Ga. L. 1974, p. 198, § 5; Ga. L. 1981, p. 119, § 1; Ga. L. 2005, p. 134, § 1/HB 275.)

The 2005 amendment, effective July 1, 2005, substituted “Board of Trustees of the Employees’ Retirement System of

Georgia” for “State Personnel Board” in the last sentence in this Code section.

45-18-34. Plans not to reduce pensions or other benefits.

Editor’s notes. — Ga. L. 2005, p. 134, § 1, effective July 1, 2005, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

45-18-35. Plans to operate without cost to state, counties, cities, or other political subdivisions.

The Board of Trustees of the Employees' Retirement System of Georgia or the administrator of the plan shall arrange for all services required to carry out the deferred compensation plan or plans so that such plan or plans shall operate without cost to the state, county, city, or other political subdivision except for employer contributions to a deferred compensation plan and for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. (Ga. L. 1974, p. 198, § 7; Ga. L. 2003, p. 887, § 1; Ga. L. 2005, p. 134, § 1/HB 275.)

The 2003 amendment, effective July 1, 2003, inserted "employer contributions to a deferred compensation plan and for" near the end of this Code section.

The 2005 amendment, effective July

1, 2005, substituted "Board of Trustees of the Employees' Retirement System of Georgia" for "State Personnel Board" near the beginning of this Code section.

45-18-36. Institution of salary deductions; records of individual account information.

Editor's notes. — Ga. L. 2005, p. 134, § 1, effective July 1, 2005, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

45-18-37. Special pay plan for deferred payment of special compensation to reduce federal tax burden.

Reserved. Repealed by Ga. L. 2007, p. 172, § 1/HB 213, effective July 1, 2007.

Editor's notes. — This Code section was based on Ga. L. 2004, p. 764, § 1; Ga. L. 2005, p. 134, § 1/HB 275.

45-18-38. Board of Trustees of the Employees' Retirement System to be the successor to the State Personnel Board and Employee Benefit Council for administration of deferred compensation plans; employment of and contracting with agents.

(a) Effective July 1, 2005, the Board of Trustees of the Employees' Retirement System of Georgia shall be the successor to the State Personnel Board for the purpose of administering any deferred compensation plan provided to employees as referenced in Code Sections 45-18-32 and 45-18-33. The State Personnel Board shall transfer individual accounts, associated funds, and any other applicable information in a manner prescribed by the Board of Trustees of the

Employees' Retirement System of Georgia no later than September 30, 2005.

(b) The Board of Trustees of the Employees' Retirement System of Georgia shall be the successor to the Employee Benefit Council for the purpose of administering any deferred compensation plan provided to employees as referenced in Code Section 45-18-52. The Employee Benefit Council shall transfer individual accounts, associated funds, and any other applicable information in a manner prescribed by the Board of Trustees of the Employees' Retirement System of Georgia.

(c) The Board of Trustees of the Employees' Retirement System of Georgia is authorized to employ agents and to contract with such agents for their services as investment advisors and counselors who will make recommendations for investments and make investments as the board of trustees so authorizes. (Code 1981, § 45-18-38, enacted by Ga. L. 2005, p. 134, § 1/HB 275; Ga. L. 2006, p. 217, § 1/HB 1151.)

Effective date. — This Code section became effective July 1, 2005.

The 2006 amendment, effective April 19, 2006, designated the first and second sentences of the previously undesignated provisions of this Code section as subsection (a), and designated the former last sentence as subsection (c); substituted "deferred" for "defined" in the middle of the first sentence of subsection (a); and added subsection (b).

ARTICLE 3

EMPLOYEE BENEFIT PLAN COUNCIL

45-18-50. Definitions.

As used in this article, the term:

(1) Reserved.

(2) "Council" means the Employee Benefit Plan Council established in Code Section 45-18-51.

(3) "Employee" means a member of the General Assembly or a person who works full time for the state and receives his or her compensation in a direct payment from a department, agency, authority, or institution of state government; a county department of family and children services or a county department of health; the Federal-State Shipping Point Inspection Service; the Georgia Firefighters' Pension Fund; a member of any local board of education; and public school teachers and public school employees as defined in Code Sections 20-2-880 and 20-2-910, exclusive of the members, employees, and officials of the Board of Regents of the University System of Georgia.

(4) "Full time" means the employment of a person who works at least 30 hours per week and whose employment is intended to be continuing employment. This would exclude any student, seasonal, intermittent, or part-time employment; provided, however, that public school teachers and public school employees as defined in Code Sections 20-2-880 and 20-2-910 shall be deemed to be employed full time for the purposes of this article. This would also exclude employment intended for only a very limited duration or in a sheltered employment program for the purpose of training or transitioning a person into the continued employment environment. (Code 1981, § 45-18-50, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1990, p. 1247, § 1; Ga. L. 2001, p. 1071, § 3; Ga. L. 2002, p. 1425, § 1; Ga. L. 2012, p. 446, § 2-76/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of paragraph (1) for the former provisions, which read: "'Board' means the State Personnel Board."; inserted "or her" near the beginning of paragraph (3); and substituted "school teachers" for "school-teachers" in paragraphs (3) and (4).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-18-51. Creation of council; membership, terms of office, and vacancies; compensation and expense reimbursement; officers; executive secretary and staff support; meetings; adoption of procedures; promulgation of rules and regulations.

(a)(1) There is created an Employee Benefit Plan Council consisting of the following ten members appointed by the Governor:

(A) The five members of the State Personnel Board who shall serve for terms of office which correspond with their terms of office on the State Personnel Board;

(B) Two department heads who have employees eligible to participate in the employee benefit plans, which department heads shall serve for terms of office of four years; provided, however, that the initial term of one of such appointees shall be two years; and provided, further, that the office of such a member shall become vacant if he or she ceases to be a department head;

(C) Two state employees who are eligible to participate in the employee benefit plans, which state employees shall serve for terms of office of four years; provided, however, that the initial term

of one of such appointees shall be two years; and provided, further, that the office of such a member shall become vacant if he or she ceases to be a state employee; and

(D) One member from a corporation domiciled in the State of Georgia that insures or administers employee benefit plans, which member shall serve for a term of office of four years.

(2) Successors to the members of the council provided in paragraph (1) of this subsection shall have the same qualifications and shall be appointed by the Governor for terms of office of four years and until their successors are appointed and qualified. A vacancy on the council shall be filled by the Governor appointing a successor who possesses the same qualifications as his or her predecessor and who shall serve for the unexpired term.

(b) The members of the council who are in state employment shall serve without compensation but, subject to fund availability, shall be reimbursed by the state department in which they are employed for all necessary expenses that may be incurred in the performance of their duties under this article in accordance with state travel regulations promulgated by the State Accounting Office. For those councilmembers who are not in state employment, the expense and mileage allowance shall be the same as that authorized for the General Assembly and shall be payable, subject to fund availability, from the Department of Administrative Services.

(c) The Governor shall appoint one member to act as chairperson for a term specified by the Governor until a successor is duly appointed. The council shall elect one of its members as vice-chairperson to act in the absence of the chairperson. If the office of chairperson is vacated for any reason, the Governor shall appoint a successor.

(d) Meetings of the council shall be scheduled at the discretion of the council chairperson and, where feasible, concomitant with the meetings of the State Personnel Board as provided in Chapter 20 of this title. All meetings of the council shall be open to the public.

(e) The council shall adopt procedures for the conduct of its activities.

(f) The commissioner of administrative services shall serve as executive secretary to the council and provide the council with staff support and other assistance in carrying out its duties.

(g) In the promulgation of rules and regulations, the council shall be governed by Chapter 20 of this title. (Code 1981, § 45-18-51, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2005, p. 694, § 38/HB 293; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-77/HB 642.)

The 2005 amendment, effective July 1, 2005, in the first sentence, inserted "they are" following "in which" and substituted "State Accounting Office" for "Office of Planning and Budget and the Department of Audits and Accounts" in subsection (b).

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" twice in subsection (b).

The 2012 amendment, effective July 1, 2012, inserted "or she" in subparagraphs (a)(1)(B) and (a)(1)(C); inserted "or her" in the second sentence of paragraph (a)(2); in subsection (b), deleted "in the same manner that employees of the State Personnel Administration are reimbursed" following "State Accounting Office" in the first sentence, and substituted "Department of Administrative Services" for "State Personnel Administration" in the second sentence; in subsections (c) and

(d), substituted "chairperson" for "chairman"; substituted "vice-chairperson" for "vice-chairman" in subsection (c); and substituted "commissioner of administrative services" for "commissioner of personnel administration" in subsection (f).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-18-52. Establishment of flexible employee benefit plans.

OPINIONS OF THE ATTORNEY GENERAL

Automobile or homeowner insurance program authorized. — O.C.G.A. § 45-18-52 authorizes the Employee Benefit Plan Council to create an automobile

or homeowner insurance program for state employees. 2003 Op. Att'y Gen. No. U2003-1.

45-18-55. Commissioner of administrative services as executive officer and custodian.

The commissioner of administrative services shall be the executive officer for the administration of this article and the custodian of such fund or funds as may be required in the implementation of this article. The commissioner of administrative services shall employ such personnel as may be necessary to carry out his or her duties and responsibilities under this article. (Code 1981, § 45-18-55, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 2012, p. 446, § 2-78/HB 642.)

The 2012 amendment, effective July 1, 2012, twice in this Code section, substituted "commissioner of administrative services" for "commissioner of personnel administration", and inserted "or her" in the second sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: "Appropriations for functions transferred as provided in Code Section which are transferred by this Act may be 45-12-90."

ARTICLE 4

CAPITOL HILL DAY-CARE CENTER

45-18-70. Establishment and operation.

Notwithstanding any other provisions of law, the commissioner of administrative services in conjunction with the Georgia Building Authority is authorized by contract or otherwise to establish, equip, and operate a day-care center as a capitol hill pilot program for the purpose of serving children who are members of households of employees of state government in and around the state capitol. The commissioner of administrative services in conjunction with the Georgia Building Authority is authorized to establish or provide for the establishment of appropriate fees and charges to be chargeable against the state employees who are beneficiaries of services provided by such facility to pay for the cost of their operation and to accept money, equipment, or other property donated for use in connection with the facility. (Code 1981, § 45-18-70, enacted by Ga. L. 1986, p. 1489, § 1; Ga. L. 2012, p. 446, § 2-79/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "commissioner of administrative services" for "commissioner of personnel administration" twice in this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-18-72. Start-up costs.

The commissioner of administrative services shall present recommendations no later than December 1, 1986, for funding any start-up costs of the pilot project. (Code 1981, § 45-18-72, enacted by Ga. L. 1986, p. 1489, § 1; Ga. L. 2012, p. 446, § 2-80/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "commissioner of administrative services" for "commissioner of personnel administration" in this Code section.

Editor's notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of

Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 6

RETIREE HEALTH BENEFIT FUND

45-18-100 through 45-18-105.

Repealed by Ga. L. 2009, p. 49, § 3, effective September 1, 2010.

Editor’s notes. — This article consisted of Code Sections 45-18-100 through 45-18-105, relating to the retiree health benefit fund, and was based on Ga. L.

2005, p. 623, § 8/SB 284; Ga. L. 2007, p. 77, §§ 4-10/SB 172; Ga. L. 2008, p. 324, § 45/SB 455.

CHAPTER 19

LABOR PRACTICES

Article 2

Fair Employment Practices

Sec.
45-19-22. Definitions.

ARTICLE 1

STRIKES BY PUBLIC EMPLOYEES

45-19-1. Definitions; right to express complaints or opinions not impaired.

JUDICIAL DECISIONS

Slowdowns in writing tickets prohibited. — Police officers were properly disciplined for violating county policy and O.C.G.A. §§ 45-19-1 and 45-19-2 by promoting a ticket slow-down program that encouraged other officers to write fewer

tickets, allegedly to cause financial problems for the county, as the slow-down program constituted a strike under § 45-19-1(3). *Douglas v. DeKalb County*, 308 Fed. Appx. 396 (11th Cir. 2009) (Unpublished).

45-19-2. Public employees not to promote, participate in, or encourage strikes.

JUDICIAL DECISIONS

Encouraging officers not to write tickets. — Police officers were properly disciplined for violating county policy and O.C.G.A. §§ 45-19-1 and 45-19-2 by promoting a ticket slow-down program that

encouraged other officers to write fewer tickets, allegedly to cause financial problems for the county. *Douglas v. Dekalb County*, 308 Fed. Appx. 396 (11th Cir. 2009) (Unpublished).

ARTICLE 2

FAIR EMPLOYMENT PRACTICES

Law reviews. — For article, “Wheel of Fortune: A Critique of the ‘Manifest Imbalance’ Requirement for Race-Conscious

Affirmative Action under Title VII,” see 43 Ga. L. Rev. 993 (2009).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Discrimination Under Age Discrimination in Employment Act, 10 POF2d 1.

Age as Bona Fide Occupational Qualification Under ADEA, 15 POF2d 481.

Proof of Discrimination Under Age Discrimination in Employment Act, 44 POF3d 79.

Contingent Worker’s Protection Under

Federal Anti-Discrimination Statutes, 57 POF3d 75.

Am. Jur. Trials. — Employment Discrimination Action under Federal Civil Rights Acts, 21 Am. Jur. Trials 1.

Disability Discrimination Based on Dyslexia in Employment Actions Under the Americans with Disabilities Act, 74 Am. Jur. Trials 255.

45-19-20. Short title.

JUDICIAL DECISIONS

Sovereign immunity under Eleventh Amendment. — Fired state employee’s monetary claims against a state agency in federal court under the Age Discrimination in Employment Act, Title I of the Americans with Disabilities Act, and 42 U.S.C. § 1981 were dismissed because the Georgia General Assembly did not waive the state’s sovereign immunity under the Eleventh Amendment by enacting the Fair Employment Practices Act, O.C.G.A. § 45-19-20 et seq., but an injunctive claim was still cognizable. *Jackson v. Oconee Cmty. Serv. Bd.*, No. 5:06-CV-55 (WDO), 2006 U.S. Dist. LEXIS 38057 (M.D. Ga. June 8, 2006).

Georgia legislature had specifically waived state’s sovereign immunity from federal disability discrimination claims because a state statute, the Fair Employment Practices Act, O.C.G.A. § 45-19-20 et seq., had waived immunity from comparable actions brought under state law; thus, defendant state DOC could have been, and was, sued in state court on federal disability discrimination claims by plaintiff former employee, and further, DOC’s removal of the case to federal court waived its eleventh amendment immunity. *Jones v. Dep’t of Corr.*, No. 1:07-CV-1228-RLV, 2008 U.S. Dist. LEXIS 22142 (N.D. Ga. Mar. 18, 2008).

45-19-22. Definitions.

As used in this article, the term:

(1) "Administrator" means the administrator of the Commission on Equal Opportunity provided for by Code Section 45-19-24, which agency is composed of an Equal Employment Division and a Fair Housing Division.

(2) "Board" means the Board of Commissioners of the Commission on Equal Opportunity created by Code Section 45-19-23.

(3) "Disability" means a physical or mental impairment which substantially limits one or more of a person's major life activities, unless an employer demonstrates that the employer is unable to accommodate reasonably to an employee's or prospective employee's disability without undue hardship on the conduct of the employer's operation.

(4) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, sex, handicap, or age or the aiding, abetting, inciting, coercing, or compelling of such an act or practice. This term shall not include any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of religion if an employer demonstrates that the employer is unable to accommodate reasonably an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's operation.

(5) "Public employer" or "employer" means any department, board, bureau, commission, authority, or other agency of the state which employs 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. A person elected to public office in this state is a public employer with respect to persons holding positions or individuals applying for positions which are subject to the state system of personnel administration created by Chapter 20 of this title, including the rules and regulations promulgated by the State Personnel Board or any personnel merit system of any agency or authority of this state. A person elected to public office in this state is not a public employer with respect to persons holding positions or individuals applying for positions on such officer's personal staff or on the policy-making level or as immediate advisers with respect to the exercise of the constitutional or legal powers of the office held by such officer.

(6) "Public employment" means employment by any department, board, bureau, commission, authority, or other agency of the State of Georgia.

(7) "Religion" means all aspects of religious observance and practice as well as belief.

(8) "Unlawful practice" means an act or practice declared to be an unlawful practice in Code Sections 45-19-29 through 45-19-31, 45-19-32, or 45-19-45. (Ga. L. 1978, p. 859, § 1; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1992, p. 1828, § 1; Ga. L. 1995, p. 1302, § 9; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-81/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" twice in paragraph (5).

The 2012 amendment, effective July 1, 2012, substituted "composed" for "comprised" in paragraph (1); in paragraph (5), substituted "state system of personnel administration created by Chapter 20 of this title, including the rules and regulations promulgated by the State Personnel Board" for "State Personnel Administration" in the second sentence, and deleted the former last sentence, which read: "The term 'public employer' shall include the State Personnel Administration whether or not such agency is the immediate em-

ployer of the party or parties claiming to be aggrieved."

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-19-29. Unlawful practices generally.

RESEARCH REFERENCES

ALR. — What constitutes substantial limitation on major life activity of working for purposes of state civil rights acts, 102 ALR5th 1.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law, 107 ALR5th 623.

What constitutes racial harassment in employment violative of state civil rights acts, 17 ALR6th 563.

Liability of employer, supervisor, or manager for intentionally or recklessly causing employee emotional distress —

ethnic, racial, or religious harassment or discrimination, 19 ALR6th 1.

Liability of employer, supervisor, or manager for intentionally or recklessly causing employee emotional distress — sexual harassment, sexual discrimination, or accusations concerning sexual conduct or orientation, 20 ALR6th 1.

"Bona fide employee benefit plan" exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.A. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans, 184 ALR Fed. 1.

45-19-30. Unlawful practices in training or apprenticeship programs.

RESEARCH REFERENCES

ALR. — What constitutes racial harassment in employment violative of state civil rights acts, 17 ALR6th 563.

45-19-31. Unlawful practices in advertisement of employment.

RESEARCH REFERENCES

ALR. — What constitutes racial harassment in employment violative of state civil rights acts, 17 ALR6th 563.

45-19-33. Different standards of compensation or different terms and conditions of employment where not based on race, color, religion, sex, national origin, disability, or age.

RESEARCH REFERENCES

Am. Jur. Trials. — Age Discrimination in Employment under ADEA, 75 Am. Jur. Trials 363.

45-19-35. Use of quotas because of imbalances in employee ratios prohibited; grants of preferential treatment to certain individuals or groups not required by article; adoption of plans required by Governor to reduce imbalance; effect of article upon certain employment practices.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Proof of Promotion Decisions Under Title VII of the Civil Rights Act of 1964, 48 POF3d 75.

45-19-37. Appointment of special master to conduct hearing on complaint; procedure.

Law reviews. — For article, "The New Special Master Rule — Uniform Superior Court Rule 46: Life Jackets for the Courts in the Perfect Storm," see 15 (No. 4) Ga. St. B.J. 20 (2009).

45-19-38. Findings, conclusions, and order of special master generally; order to cease and desist from unlawful practice and to take remedial action.

JUDICIAL DECISIONS

Monetary damages available. — Georgia Whistle Blower Statute (Act), O.C.G.A. § 45-1-4, does not provide a remedy of monetary damages for public employees as: (1) the legislature did not specifically include a monetary damages remedy, such as the remedy provided by the Georgia Fair Employment Practices Act, specifically O.C.G.A. § 45-19-38(c);

(2) the limitations of statutes waiving sovereign immunity have to be strictly followed; and (3) to “set aside” an action, the language used in the Act, consistent with the accepted definition of “set aside,” requires the action to be vacated, cancelled, and annulled. *Hughes v. Ga. Dep’t of Corr.*, 267 Ga. App. 440, 600 S.E.2d 383 (2004).

CHAPTER 20

PERSONNEL ADMINISTRATION

Article 1

General Provisions

Sec.

Sec.

- 45-20-1. Purposes; principles.
- 45-20-2. Definitions.
- 45-20-3. Duties and functions of State Personnel Board generally; compensation; quorum.
- 45-20-3.1. Rule-making procedure.
- 45-20-4. Duties and responsibilities of commissioner in administration of this chapter.
- 45-20-5. Creation of Council for State Personnel Administration; membership; objectives; powers [Repealed].
- 45-20-6. Composition of classified and unclassified service; effect of exclusion from classified service on eligibility for membership in Employees’ Retirement System of Georgia; working test period before obtaining rights of appeal.
- 45-20-7. Employees in legislative branch authorized to become covered employees; procedure [Repealed].
- 45-20-8. Procedure for adverse action

- 45-20-9. against classified employees generally; appeals generally. Procedure for conduct of hearings and appeals relating to adverse personnel actions.
- 45-20-10. Collection, compilation, consolidation, and submission of certain personnel data.
- 45-20-11, 45-20-12 [Repealed].
- 45-20-13, 45-20-14 [Repealed].
- 45-20-15. Confidentiality of information received by staff in counseling; exceptions [Repealed].
- 45-20-16. Rules for accrual of leave, holidays, and compensation for closing of state offices; utilization of accumulated sick leave; conversion to and use of personal leave; disapproval of sick leave; procedure for contesting disapproval; regain of forfeited sick leave after re-employment.
- 45-20-17. Interdepartmental transfers [Repealed].
- 45-20-19. Termination or elimination of positions or employees through reduction in force.
- 45-20-20. Eligible employees must reg-

Sec.

ister with Selective Service System; exemptions.

- 45-20-21. Performance management system.

Article 3

Voluntary Deductions from Wages or Salaries of State Employees for Benefit of Charitable Organizations

- 45-20-51. Definitions.
- 45-20-52. Board as policy-setting body for administration of article; rules and regulations for implementation of article.
- 45-20-53. Deduction from salaries or wages for contribution to charitable organizations.
- 45-20-54. Disclosure of amounts or designations of authorized charitable deductions; pressure, coercion, or intimidation of employee with reference to deductions.

Article 4

Employee Assistance Program

- 45-20-70.1. Program authorized.

Sec.

- 45-20-71. Confidentiality of program related records or activities.

Article 5

Random Drug Testing of Employees in High-risk Jobs

- 45-20-90. Definitions.
- 45-20-91. Determination of employees subject to testing.
- 45-20-92. Rules adopted by State Personnel Board; certification of testing laboratories.
- 45-20-93. Grounds for termination from employment.

Article 6

Drug Testing for State Employment

- 45-20-111. Analysis of positions warranting established test; testing requirements, cost, and procedure; disqualification from employment for refusing test or showing positive results.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, “Wheel of Fortune: A Critique of the ‘Manifest Imbalance’ Requirement for Race-Conscious Affirmative Action under Title VII,” see 43

Ga. L. Rev. 993 (2009). For article, “The Public Policy Exception to Employment At-Will: Time to Retire a Noble Warrior?,” see 61 Mercer L. Rev. 551 (2010).

45-20-1. Purposes; principles.

(a) It is the purpose of this article to establish in the state a system of personnel administration which will attract, select, and retain the best employees based on merit, free from coercive political influences, with incentives in the form of equal opportunities for all; which will provide technically competent and loyal personnel to render impartial service to the public at all times and to render such service according to the dictates of ethics and morality; and which will remove unnecessary and inefficient employees. It is specifically the intent of the General Assembly to promote this purpose by allowing agencies greater flexibility in personnel management so as to promote the overall effectiveness and efficiency of state government. To this end, and in accordance

with Code Sections 45-20-2 and 45-20-6, all positions filled after July 1, 1996, shall be included in the unclassified service as defined in this article, except as provided in Code Section 15-11-24.3. It is also specifically the intent of the General Assembly that employees in the classified service prior to July 1, 1996, shall continue to be employees in the classified service so long as they remain in classified positions or as otherwise provided by law. It is further specifically the intent of the General Assembly that state government operate within a framework of consistent core personnel policies and practices across all state agencies and entities and that the state's most valued resource, its employees, be managed in a manner to promote work force productivity and sound business practices.

(b) In order to achieve these purposes, it is the policy of the state that agencies treat all employees in accordance with the following principles:

- (1) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, national origin, sex, age, disability, religious creed, or political affiliations. This "fair treatment" principle includes compliance with all state and federal equal employment opportunity and nondiscrimination laws;

- (2) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial employment;

- (3) Providing equitable and adequate compensation based on merit, performance, job value, and competitiveness within applicable labor markets;

- (4) Training employees, as needed, to assure high quality performance and to provide work force skills needed to maintain and advance the state's goals and objectives;

- (5) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance where possible and appropriate, and separating employees whose performance is inadequate; and

- (6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

(c) It shall be the responsibility of the Department of Administrative Services (DOAS) to perform the following functions:

- (1) Establish and maintain a state-wide system of pay ranges for all job classes;

(2) Define job classes, establish associated minimum qualifications for those classes, and assign those classes to appropriate pay ranges;

(3) Develop and maintain a common employment application form to be used by all applicants for state employment, which form may be supplemented as necessary by agencies in seeking information about agency job classes;

(4) Develop, validate, or administer applicant screening devices when requested by agencies and when funding for such activities can be accomplished on a cost recovery basis;

(5) In consultation with agencies, establish state-wide criteria for the implementation of rules and policies adopted by the State Personnel Board which agencies shall use in developing internal processes for classification, compensation, pay for performance, and performance management, including processes involved in defining job classes, establishing and applying associated minimum qualifications, assigning jobs to appropriate state-wide pay ranges, developing and applying applicant screening methods, and measuring worker effectiveness;

(6) Audit agencies' processes as referred to in paragraph (5) of this subsection and report findings annually to the Governor and the General Assembly in conjunction with an annual report on the overall status of the state work force. The DOAS shall not be required to distribute copies of the findings or annual report referred to in this paragraph to the members of the General Assembly but shall notify the members of the availability of the materials in the manner which it deems to be most effective and efficient; and

(7) Maintain and make available to the public at large a state-wide central registry of employment vacancies and job announcements in state government as provided by agencies.

(d) Subsection (c) of this Code section shall not apply to the legislative or judicial branches or to the board of regents.

(e) Each agency shall develop a work force plan as a component of the strategic plan required by Code Section 45-12-177.

(f) In the event agencies do not use a competitive civil service examination to fill some or all of their unclassified positions, it is expressly the intent of the General Assembly that appropriate consideration be given to veterans as defined under Article IV, Section III, Paragraph II of the Constitution of Georgia and Article 2 of Chapter 2 of this title in the filling of job vacancies in this state. Guidelines defining consideration practices shall be developed at the state level. Agencies shall specify agency policies and practices to implement

appropriate consideration of military veterans in filling agency job vacancies.

(g) The rules of statutory construction contained in Chapter 3 of Title 1, relating to general provisions concerning the construction of statutes, as now or hereafter amended, shall apply to this article. (Ga. L. 1972, p. 1015, § 2501; Ga. L. 1975, p. 79, §§ 1, 2; Ga. L. 1976, p. 1547, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 684, § 1; Ga. L. 2000, p. 1258, § 2; Ga. L. 2000, p. 1377, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2005, p. 1036, § 31/SB 49; Ga. L. 2008, p. 546, § 1/SB 230; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2005 amendment, effective July 1, 2005, added the last sentence in paragraph (c)(9).

The 2008 amendment, effective May 12, 2008, in subsection (a), substituted “to be employees in the classified service so long as they remain in classified positions” for “to be covered employees in the classified service and shall remain subject to the rules and regulations of the state merit system so long as they remain in classified positions” in the third sentence and inserted “core” near the middle of the last sentence; in subsection (b), deleted “, whether included in the classified or unclassified service,” following “all employees” in the introductory language; at the beginning of the introductory paragraph in subsection (c), substituted “It shall be” for “With respect to employees in the unclassified service, it shall be”; in paragraph (c)(2), deleted “common” preceding “job classes” near the beginning; in paragraph (c)(8), substituted “criteria for the implementation of rules and policies adopted by the State Personnel Board” for “model standards and processes and best practices criteria”; deleted former subsection (d), relating to the functions an employing agency should perform; redesignated former subsections (e) through (h) as present subsections (d) through (g), respectively; and, in subsection (d), substituted “Subsection (c) of this Code section shall not apply to the legislative or judicial branches or to the board of regents.” for “Subsections (c) and (d) of this Code section shall not apply to the legislative or judicial branches, to the board of regents, or to any agency which employed no classified employees as of July 1, 1996”.

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” throughout this Code section.

The 2012 amendment, effective July 1, 2012, substituted “as defined in this article” for “of the State Personnel Administration” in the third sentence of subsection (a); substituted “Department of Administrative Services (DOAS)” for “State Personnel Administration” in the introductory paragraph of subsection (c); inserted a comma following “classes” in paragraph (c)(2); substituted the present provisions of paragraph (c)(4) for former paragraphs (c)(4) through (c)(7), relating to serving as the central contact point, applicant screening devices, administering screening devices, and training, respectively; redesignated former paragraphs (c)(8) and (c)(9) as present paragraphs (c)(5) and (c)(6), respectively; and, in paragraph (c)(6), substituted “paragraph (5)” for “paragraph (8)” in the first sentence, and substituted “DOAS” for “State Personnel Administration” in the second sentence; deleted former paragraph (c)(10), relating to consulting on work force planning; redesignated former paragraph (c)(11) as present paragraph (c)(7); deleted “to the State Personnel Administration” preceding “by agencies” near the end of paragraph (c)(7); and substituted “develop a work force plan as a component of the strategic plan required by Code Section 45-12-177” for “develop an annual work force plan according to state-wide criteria and guidelines and shall provide a report of such plan annually to the State Personnel Administration for incorporation into the state-wide work

force plan to be submitted to the Governor and the General Assembly” in subsection (e).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Admin-

istrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 5B Am. Jur. Pleading and Practice Forms, Civil Service, § 2.

45-20-2. Definitions.

As used in this chapter, the term:

(1) “Appointing authority” means the person or groups of persons authorized by law or delegated authority to make appointments to fill positions.

(2) “Classified employee” means an employee who was in the classified service as of June 30, 1996, and who has remained in a classified position without a break in service since that date.

(3) “Classified position” means a position that held classified status conferring rights of appeal, as set forth in Code Sections 45-20-8 and 45-20-9, as of June 30, 1996, and that subsequent to June 30, 1996, has not been held by an unclassified employee.

(4) “Classified service” means employment in a classified position.

(5) “Commissioner” means the commissioner of administrative services provided for by Code Section 50-5-1.

(6) “Department” and “agency” are synonymous and mean all separate and distinct divisions and subdivisions of state government whose heads are legally authorized to appoint employees to positions; but these terms shall not include authorities, public corporations, the legislative and judicial branches, and the board of regents. “Department” and “agency” shall also include an agency assigned to a department for administrative purposes and local departments of public health, county departments of family and children services, community service boards, and units of the Department of Defense with local employees.

(7) “Department of Administrative Services” or “DOAS” means the department created by Code Section 50-5-1.

(8) "Employment at will" means an employment relationship in which either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason.

(9) "Position" means a set of duties and responsibilities assigned or delegated by competent authority for performance by one person.

(10) "Rules and regulations" means the governing provisions adopted by the State Personnel Board and approved by the Governor.

(11) "State Personnel Board" and "board" are synonymous and mean the body authorized by Article IV, Section III, Paragraph I of the Constitution of Georgia.

(12) "State Personnel Board policies" means those policies adopted by the board and approved by the Governor which describe the goals and objectives of the state personnel program and serve as a basis for the formulation and administration of the merit system rules and regulations.

(13) "Unclassified employee" means an employee who is not a classified employee.

(14) "Unclassified service" means employment at will and includes all employees except those in the classified service as defined in this Code section.

(15) "Working test" or "working test period" means a probationary period of employment in a classified position during which the employee must demonstrate to the satisfaction of the appointing authority that he or she has the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which employed. The working test period shall apply to each promotion of a classified employee to a classified position. The commissioner may fix the length of the working test period for any job at not less than six months nor more than 18 months exclusive of any time in nonpay status; provided, however, that the length of the working test period for troopers of the Uniform Division of the Department of Public Safety shall be 18 months.

(16) "Working test employee" or "employee on working test" means a classified employee serving a working test period in the position in which he or she is employed; provided, however, that an employee serving a working test period following a promotion in the same department from a lower class in which he or she had successfully completed a working test period shall retain appeal rights in the lower class until he or she successfully completes the working test period in the job to which he or she has been promoted. (Ga. L. 1972, p. 1015, § 2501; Ga. L. 1975, p. 79, § 2; Ga. L. 1976, p. 1547, § 1; Ga. L. 1982, p. 830, § 2; Ga. L. 1982, p. 1251, §§ 1, 2; Ga. L. 1983, p. 3,

§§ 34, 61; Ga. L. 1983, p. 459, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 467, §§ 1, 2; Ga. L. 1985, p. 547, § 1; Ga. L. 1986, p. 469, §§ 1, 2; Ga. L. 1987, p. 575, § 4; Ga. L. 1988, p. 1252, § 5; Ga. L. 1990, p. 732, §§ 1-3; Ga. L. 1993, p. 510, § 1; Ga. L. 1993, p. 791, § 1; Ga. L. 1993, p. 1399, § 3; Ga. L. 1994, p. 97, § 45; Ga. L. 1994, p. 437, § 9; Ga. L. 1995, p. 345, § 1; Ga. L. 1995, p. 1069, § 3; Ga. L. 1996, p. 684, § 2; Ga. L. 2000, p. 1258, § 3; Ga. L. 2000, p. 1377, § 1; Ga. L. 2008, p. 335, § 8/SB 435; Ga. L. 2008, p. 546, § 2/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in paragraph (15)(BB). The second 2008 amendment, effective May 12, 2008, rewrote paragraph (2); in paragraph (3), inserted “and rules” near the end; deleted former paragraphs (4), (8.1), (9), and (11), defining “Confidential position”, “Interdepartmental transfer”, “Permanent employee”, and “Positions of purely policy-making nature”, respectively; redesignated former paragraphs (5) through (17) as present paragraphs (4) through (14), respectively; rewrote paragraphs (4) and (5); in paragraph (6), substituted “authorities, public corporations, the legislative and judicial branches, and the board of regents” for “authorities and public corporations” in the first sentence; rewrote paragraph (7); in paragraph (11), substituted “Governor which describe” for “Governor, which policies describe”; rewrote paragraph (12); in paragraph (13), substituted “classified position” for “class of covered positions” in the first sentence, substituted “of a classified employee to a classified position” for “and interdepartmental transfer as provided in Code Section 45-20-17” in the second sentence, in the third sentence, substituted “any job” for “class job”, and deleted “or an unclassified position” following “nonpay status”, and deleted the former last sentence, which read: “The State Personnel Board shall provide guidelines to be used by appointing authorities in reviewing classified employees during the working test period”; and, in paragraph (14), substituted “classified employee” for “covered employee”, substituted “position” for “class of positions”, and substituted “had

successfully completed a working test period shall retain appeal rights in the lower class until he or she successfully completes the working test period in the job” for “held permanent status shall retain permanent status rights in the lower class until he or she attains permanent status in the class”, and deleted “; provided, further, that an employee with five years or more of continuous state service who is serving a working test period following an interdepartmental transfer shall retain permanent status rights in the new department as provided in subsection (b) of Code Section 45-20-17” following “been promoted” at the end. See the Code Commission note regarding the effect of these amendments.

The 2012 amendment, effective July 1, 2012, deleted former paragraphs (2) and (3), relating to classified service and commissioner of personnel administration, respectively; redesignated former paragraphs (4) and (5) as present paragraphs (2) and (3), respectively; substituted “that held classified status conferring rights of appeal, as set forth in Code Sections 45-20-8 and 45-20-9, as of” for “that was classified on” in paragraph (3); added paragraphs (4) and (5); in paragraph (6), inserted “also” near the middle, and deleted “shall also include” preceding “local departments”; added paragraph (7); redesignated former paragraphs (7) through (11) as present paragraphs (8) through (12), respectively; in paragraph (10), substituted “means” for “and ‘merit system rules and regulations’ mean”, deleted “of the State Personnel Administration, as” preceding “adopted by”, and deleted “which give force and effect to the policies of the State Personnel Board” at the end; added paragraph (13); and reded-

igned former paragraphs (12) through (14) as present paragraphs (14) through (16), respectively.

Code Commission notes. — The amendment of this Code section by Ga. L. 2008, p. 335, § 8, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 546, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — Ga. L. 2009, p. 745, § 2, purported to amend this Code section, but the amendment was inapplicable.

Ga. L. 2012, p. 446, § 3-1/HB 642, not

codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

1996 and 2000 amendments were not unconstitutional. — Ga. Const. 1983, Art. IV, Sec. III, Para. I left it to the General Assembly to create a state merit system by the enactment of laws regarding selection of state personnel based on merit; legislation providing systems for public employment was subject to amendment or even repeal, and so the 1996 and 2000 amendments to O.C.G.A. § 45-20-2(15) were not unconstitutional. *SEIU v. Perdue*, 280 Ga. 379, 628 S.E.2d 589 (2006).

Director of a community service board is a covered employee. — Summary judgment for community service board on a former executive director's breach of employment contract claim was reversed because the trial court erred in determining that the director was an official instead of an employee under the State of Georgia Merit Protection System; under O.C.G.A. §§ 37-2-6.1(b)(7) and 37-2-6.2, the board was a state agency when the board terminated the director, and the director was a classified employee in a covered position under the State

Merit Protection System, O.C.G.A. § 45-20-2(2) and (6). *Ashe v. Clayton County Community Serv. Bd.*, 2003 Ga. App. LEXIS 1003 (Aug. 13, 2003) (Unpublished).

Persons not covered. — Plaintiff, a former safety engineering manager for Georgia Southern University, did not have a protected property interest in the plaintiff's continued employment at the time of termination and, thus, the plaintiff's termination did not support a due process claim against the individual defendants as, at the time of the plaintiff's termination, the applicable statute, former paragraph (15)(I) of O.C.G.A. § 45-20-2, expressly excluded from the state merit system all officers, officials, and employees of the University System of Georgia, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order. The plaintiff did not point to any law or executive order exempting the plaintiff's position from this exclusion. *Anderson v. Bd. of Regents*, No. 1:04-CV-3135-JEC, 2011 U.S. Dist. LEXIS 113101 (N.D. Ga. Sept. 30, 2011).

OPINIONS OF THE ATTORNEY GENERAL

Promulgation of policies. — Absent explicit statutory provisions to the contrary, the Merit System Act does not generally authorize the State Personnel Board or the Merit System Commissioner to promulgate rules or adopt policies that would be binding on agencies or depart-

ments that are not "covered," nor can such rules or policies be promulgated pursuant to a gubernatorial executive order. 2006 Op. Att'y Gen. No. 2006-3.

Employees of community service boards. — Employees of community service boards hired after July 1, 1996, are

not in the classified service of the State Merit System. 2003 Op. Att'y Gen. No. 2003-2.

45-20-3. Duties and functions of State Personnel Board generally; compensation; quorum.

(a)(1) The State Personnel Board shall provide direction by which the state's personnel policies shall be administered. The state's personnel policies shall constitute a state merit system of personnel administration. The board shall hold regular meetings as needed for the proper discharge of its duties.

(2) Members of the board shall receive no salary but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is attending meetings or performing official business for the board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance or official business.

(3) Three members shall constitute a quorum. Only the votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the State Personnel Board, provided there is a quorum.

(b) It shall be the specific duty and function of the board:

(1) To represent the public interest in the improvement of personnel administration in all state departments;

(2) To determine appropriate human resource management goals and objectives and prescribe policies for their accomplishment;

(3) At public hearings, to adopt and amend policies, rules, and regulations effectuating the state's merit system. Notice of board meetings shall be released to all departments and agencies and shall be prominently posted at the office of the DOAS at least ten days prior to each board meeting;

(4) Where the board deems appropriate, to review adverse personnel actions for employees of the classified service in accordance with the rules and regulations. All appeals determinations of the board shall be written and documented as to findings of fact, bases for decisions, and prescribed remedies;

(5) To assure the administration of state and federal laws relating to state personnel administration; and

(6) To promote public understanding of the purposes, policies, and practices of the state personnel system and to advise and assist the

several state departments in fostering merit selection and securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards under the state's personnel system. (Ga. L. 1975, p. 79, § 4; Ga. L. 1976, p. 1547, § 2; Ga. L. 1979, p. 780, § 1; Ga. L. 1981, p. 1026, § 1; Ga. L. 1984, p. 427, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1997, p. 844, § 1; Ga. L. 2000, p. 1377, § 1; Ga. L. 2008, p. 546, § 3/SB 230; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in paragraph (a)(1), substituted "as needed" for "at least once each month and may hold additional meetings as may be required" in the second sentence; in paragraph (b)(2), deleted "for the employees of the classified and unclassified service" preceding "and prescribe"; in paragraph (b)(3) in the first sentence, inserted a comma following "hearings" near the beginning, and deleted "with respect to employees of the classified and unclassified service" preceding "subject to"; deleted the former second sentence, which read: "The rules and regulations of the State Personnel Board in effect on March 13, 1975, shall remain in effect until amended, changed, modified, or repealed by the board."; and, in paragraph (b)(4), in the first sentence, substituted "a dismissal and" for "dismissals," near the middle and deleted ", and other purported violations of the rules and regulations in the several departments which are included in the classified service as well as in other matters under the board's jurisdiction" following "State Personnel Board" at the end.

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" twice in paragraph (b)(3) and in paragraph (b)(7).

The 2012 amendment, effective July 1, 2012, in paragraph (a)(1), substituted "provide direction" for "prescribe the guidelines" in the first sentence and added the second sentence; in the introductory paragraph of subsection (b) and in paragraph (b)(3), substituted "board" for "State Personnel Board"; in paragraph (b)(3), in

the first sentence, substituted "the state's merit system" for "the State Personnel Administration and the state's personnel policies and practices subject to approval by the Governor", and substituted "DOAS" for "State Personnel Administration" in the second sentence; in paragraph (b)(4), rewrote the first sentence, which read: "Where the board deems a review appropriate, for employees of the classified service, to ensure that a review is afforded on a dismissal and other adverse personnel actions defined by the rules and regulations of the State Personnel Board."; in paragraph (b)(5), added "and" at the end; deleted former paragraph (b)(6), which read: "To establish an annual budget covering all the costs of State Personnel Board operations, said budget to be incorporated as a component of the annual budget of the State Personnel Administration; and"; redesignated former paragraph (b)(7) as present paragraph (b)(6); , and substituted "state personnel system" for "State Personnel Administration" in paragraph (b)(6).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-3.1. Rule-making procedure.

(a) At least 30 days prior to the date of a public hearing held by the board to consider the adoption of rules or regulations to effectuate this chapter, the commissioner shall transmit a notice containing an exact copy of the proposed rule or regulation to each member of the Senate Government Oversight Committee and the House Committee on Governmental Affairs. The notice shall provide a citation to the authority pursuant to which the proposed rule or regulation is to be adopted and, if it amends an existing rule or regulation, such existing rule or regulation shall be clearly identified. The notice shall also state the date, time, and place of the public hearing at which adoption of the proposed rule shall be considered.

(b) If, prior to the date of the public hearing at which the proposed rule or regulation is to be considered for adoption, the chairperson of either legislative committee specified in subsection (a) of this Code section notifies the commissioner that the committee objects to the adoption of the proposed rule or regulation or has questions concerning the purpose, nature, or necessity of the proposed rule or regulation, it shall be the duty of the commissioner to consult with the committee prior to the board's adoption of the proposed rule or regulation.

(c) If the commissioner finds that the immediate adoption of a rule or regulation is necessary to secure or protect the interests of the DOAS, such rule or regulation may be adopted by the board on an emergency basis without following the procedures required by subsections (a) and (b) of this Code section. In that event, the commissioner shall present a resolution to the board for adoption declaring the existence of an emergency and explaining the basis for such declaration as a condition necessary to adopt a rule or regulation on an emergency basis. Any rule or regulation adopted pursuant to the authority of this subsection shall expire in not more than 120 days immediately following its adoption, but the adoption of an identical rule pursuant to the requirements of this Code section shall not be precluded.

(d) Each rule or regulation adopted by the board shall become effective upon approval by the Governor. The commissioner shall immediately file an original and two copies of the rule or regulation in the office of the Secretary of State.

(e) Rules or regulations filed with the Secretary of State pursuant to subsection (d) of this Code section shall contain a citation to the authority pursuant to which the rules or regulations are adopted and, when existing rules or regulations are amended, the filings shall clearly identify the existing rules or regulations. The Secretary of State shall endorse on each filing the time and date of the filing and shall maintain a file of the rules and regulations for public inspection.

(f) Rules and regulations filed with the Secretary of State pursuant to the requirements of subsections (d) and (e) of this Code section shall be published by the Secretary of State as a part of the rules of state agencies published by the Secretary of State pursuant to Code Section 50-13-7.

(g) The courts shall take judicial notice of any rule which has become effective pursuant to this chapter. (Code 1981, § 45-20-3.1, enacted by Ga. L. 1985, p. 1250, § 1; Ga. L. 1987, p. 3, § 45; Ga. L. 1992, p. 6, § 45; Ga. L. 1995, p. 10, § 45; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in the first sentence of subsection (c).

The 2012 amendment, effective July 1, 2012, substituted “commissioner” for “State Personnel Board” throughout this Code section; in subsection (a), in the first sentence, inserted “by the board” near the beginning, and substituted “the Senate Government Oversight Committee and the House Committee on Governmental Affairs” for “the State and Local Governmental Operations Committee of the Senate and the Governmental Affairs Committee of the House of Representatives” at the end; in subsection (b), substituted “chairperson” for “chairman”, deleted “of personnel administration and the State Personnel Board” following “notifies the commissioner”, and inserted “board’s” near the end; in subsection (c), in the first sentence, substituted “DOAS” for “State Personnel Administration”, inserted “by the board” near the middle, and inserted “subsections (a) and (b) of” near the end, and, in the second sentence, substituted “shall present a resolution to the board for adoption” for “shall adopt a resolution”; deleted former subsection (d), relating to filing rules and regulations with the Sec-

retary of State; redesignated former subsections (e) through (h) as present subsections (d) through (g); in subsection (d), substituted “the board” for “the State Personnel Board on or after July 1, 1985,” in the first sentence, and deleted “of personnel administration” following “commissioner” in the second sentence; in subsection (e), in the first sentence, substituted “subsection (d)” for “subsections (d) and (e)”, and deleted “required by said subsections (d) and (e)” following “the filings”, and in the second sentence, deleted “required by subsections (d) and (e) of this Code section” following “each filing”; substituted “subsections (d) and (e)” for “subsections (d), (e), and (f)” in subsection (f).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. HB0642, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-4. Duties and responsibilities of commissioner in administration of this chapter.

The duties and responsibilities of the commissioner in the administration of this chapter shall be:

(1) To serve as executive secretary to the board, to attend meetings as directed by the board, and to provide such professional, technical,

and other supportive assistance as may be required by the board in the performance of its duties;

(2) To submit to the Governor the rules and regulations adopted by the board. Such rules and regulations when approved by the Governor shall have the force and effect of law and shall be binding upon the state departments covered by this article and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, appointments, promotions, transfers, demotions, appeals of classified employees, reports of performance, payroll certification, and other phases of personnel administration. Such rules and regulations shall define and prohibit improper political activity by any departmental employee of the State Personnel Board or any employee covered under the terms of this article and shall provide that there shall be no discrimination for or against any person or employee in any manner, to include, but not be limited to, hiring, discharge, compensation, benefits, terms or conditions of employment, promotion, job classification, transfer, privileges, or demotion because of political affiliation, religious affiliation, race, creed, national origin, sex, age between 40 and 70 years, or physical disability. Such rules and regulations shall conform to the minimum standards for merit systems of personnel administration as specified by those federal departments from which federal funds are obtained for use by the several state departments covered by this article. Compensation plans and modifications thereto promulgated under the rules and regulations of the commissioner shall become effective as adopted upon approval of the director of the Office of Planning and Budget;

(3) To administer the adoption and compliance with rules and regulations of the board in all departments;

(4) To appoint and prescribe the duties of DOAS staff as necessary to carry out the duties of this chapter;

(5) To establish an annual budget covering administrative costs of performing the duties and responsibilities in accordance with this chapter, including the costs of administering such federal laws relating to personnel administration as the Governor may direct including the Intergovernmental Personnel Act of 1970, and to determine an equitable basis of allocating the annual costs among the several departments served by the DOAS in accordance with this chapter, with the amounts and rates for such services to be established in each general or amended appropriations Act;

(6) To ensure compliance with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration, and related matters; and

(7) To cooperate with appointing authorities in the administration of this article in order to promote public service and establish conditions of service which will attract and retain employees of character and ability and to increase efficiency and economy in governmental departments by improving the methods of personnel administration with full recognition of the requirements and needs of management. (Ga. L. 1975, p. 79, § 5; Ga. L. 1979, p. 780, §§ 2, 3; Ga. L. 1995, p. 1302, § 13; Ga. L. 2000, p. 1377, § 2; Ga. L. 2008, p. 546, § 4/SB 230; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in paragraph (b)(3), substituted “appointments, promotions, transfers, demotions, appeals of classified employees, reports of performance, payroll certification, and other phases” for “and the establishment of registers of persons eligible for employment, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, tenure, reinstatement, appeals, reports of performance, payroll certification, employee training, and all other” in the second sentence; and, in paragraph (b)(9), deleted “shall be in the unclassified service and any of them” preceding “shall have the” in the last sentence.

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of

Personnel Administration” twice in paragraph (b)(6).

The 2012 amendment, effective July 1, 2012, rewrote this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-5. Creation of Council for State Personnel Administration; membership; objectives; powers.

Reserved. Repealed by Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012.

Editor’s notes. — This Code section was based on Ga. L. 1975, p. 79, § 10; Ga. L. 1976, p. 1486, § 2; Ga. L. 2008, p. 546, § 5/SB 230.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Depart-

ment of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-6. Composition of classified and unclassified service; effect of exclusion from classified service on eligibility for membership in Employees' Retirement System of Georgia; working test period before obtaining rights of appeal.

(a) Any officer or employee who occupied a classified position under the State Personnel Administration prior to July 1, 1996, or as provided in Code Section 15-11-24.3 shall remain in the classified service so long as such officer or employee shall remain in a classified position or as otherwise provided by law. Employees in the classified service shall have, upon completing a working test period, appeal rights as provided in Code Sections 45-20-8 and 45-20-9.

(b) Reserved.

(c) Exclusion from the classified service shall not exclude any employee, officer, or official from eligibility for membership or membership in the Employees' Retirement System of Georgia, provided that such employee, officer, or official is otherwise eligible for membership under Chapter 2 of Title 47.

(d) It is the intent of the General Assembly that employees in the classified service be required to serve a working test period before they obtain rights of appeal and that the successful completion of this probationary period is part of the employment examination procedure. Each employee serving in a working test period shall be provided with management review by the appointing authority within ten calendar days of the date the employee has completed one-half of the working test period or as near to such date as is practicable. The management review shall include an evaluation of the employee's progress and recommendations, if any, for corrective action. The provision of management review pursuant to this subsection is solely for the purpose of promoting efficient management and employee development and shall not be interpreted as granting any additional rights to a working test employee. The State Personnel Board shall be responsible for adopting and amending rules and regulations establishing the guidelines to be used by the appointing authority in completing the management review pursuant to this subsection. (Ga. L. 1975, p. 79, § 6; Ga. L. 1976, p. 1547, § 6; Ga. L. 1989, p. 279, § 1; Ga. L. 1996, p. 684, § 3; Ga. L. 2000, p. 1258, § 4; Ga. L. 2008, p. 546, § 6/SB 230; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (a), combined and rewrote the former first and second sentences as the present first sentence, in the present second sentence, substituted "classified position" for "covered position"

twice, and added the third sentence; in subsection (b), in the first sentence, substituted "all employees" for "all positions" near the middle, deleted "and these positions shall not be subject to the rules and regulations of the State Personnel Board"

following “under this article” at the end, and added the last sentence; and, in subsection (d), substituted “rights of appeal” for “merit system protection” in the first sentence.

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” in the first sentence of subsection (a).

The 2012 amendment, effective July 1, 2012, in subsection (a), deleted the former first sentence, which read: “The classified service as defined by Code Section 45-20-2 shall consist of only those employees who were in the classified service on June 30, 1996, and who have remained in a classified position without a break in service since that date.”, and substituted “occupied” for “occupies” in the present first sentence; and substituted the present provisions of subsection (b) for the former provisions, which read: “The unclassified service as defined by Code Sec-

tion 45-20-2 shall consist of all employees in the departments of state government not included in the classified service under this article. Employees in the unclassified service shall be employees at will and shall not be afforded appeal rights.”

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-7. Employees in legislative branch authorized to become covered employees; procedure.

Reserved. Repealed by Ga. L. 2006, p. 698, § 1/SB 286, effective May 3, 2006.

Editor’s notes. — This Code section was based on Ga. L. 1975, p. 79, § 3; Ga. L. 1990, p. 8, § 45.

Ga. L. 2012, p. 446, § 1-1/HB 642, reenacted the reservation of this Code section without change.

45-20-8. Procedure for adverse action against classified employees generally; appeals generally.

(a) Classified employees who have successfully completed a working test period may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board governing adverse actions and appeals for classified employees.

(b) This article is not intended to create a property interest in the job, but rather to create only a procedure under which classified employees can be dismissed or otherwise adversely affected. The procedure adopted for dismissing a classified employee from employment or otherwise adversely affecting his or her compensation or employment status shall include, as a minimum, that the appointing authority must provide the classified employee with reasons for the action and an opportunity to file an appeal and request a hearing which may be held

before either the board or an administrative law judge of the Office of State Administrative Hearings; provided, however, that the hearing may be held subsequent to the effective date of the dismissal or other purported adverse action; provided, further, that the right to appeal shall not apply when persons are dismissed or otherwise adversely affected as to compensation due to curtailment of funds or reduction in staff when such action is in accordance with the rules and regulations of the State Personnel Board.

(c) No adverse action appealed to the State Personnel Board under the rules and regulations of the board, this article, or otherwise shall be considered invalid for failure to follow or comply with the rules and regulations of the board, this article, or any other requirement unless it is shown that the individual against whom the action has been taken has been substantially harmed by the procedural failure.

(d) The decision of the board on an appeal as to whether a dismissal or other adverse action was in accordance with the rules and regulations prescribed by the State Personnel Board shall be binding upon the appointing authority. The board may modify the action of the appointing authority but may not increase the severity of such action on the employee. Such appointing authority shall promptly comply with such order as may be issued as a result of the appeal to the State Personnel Board. The decision of the board shall not limit the rights of the employee or the department to judicial review as to errors of law, and such decision shall be stayed pending other further appeal.

(e) For purposes of this Code section and Code Section 45-20-9, administrative law judges appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50 are authorized to hold hearings and otherwise assist the State Personnel Board in the resolution of appeals. (Ga. L. 1975, p. 79, § 7; Ga. L. 1976, p. 1547, § 3; Ga. L. 1979, p. 780, § 4; Ga. L. 1982, p. 1245, §§ 1, 2; Ga. L. 1985, p. 149, § 45; Ga. L. 1997, p. 844, § 2; Ga. L. 2008, p. 546, § 7/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (a), substituted “Classified employees who have successfully completed a working test period” for “Permanent status employees” at the beginning and added “governing adverse actions and appeals for classified employees” at the end; and in subsection (b), substituted “classified” for “permanent status” once in the first sentence, and substituted “classified” for “permanent status” twice and inserted “or her” in the second sentence.

The 2012 amendment, effective July

1, 2012, inserted “of the Office of State Administrative Hearings” near the middle of the second sentence of subsection (b); and inserted a comma following “judicial review as to errors of law” in the last sentence of subsection (d).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective

date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

Employee’s statutory right to a hearing. — Trial court did not err when the court held that the State Personnel Board exceeded the board’s authority in adopting regulations authorizing an administrative law judge to resolve an appeal from the board’s termination of a classified state employee without holding an evidentiary hearing because the regulation at issue, Ga. Pers. Bd. R. & Regs., Reg. 478-1-.24(6)(e) and (x), did not comport with the Georgia Merit System Act, O.C.G.A. §§ 45-20-8 and 45-20-9, in that the regulation denied the employee, who had been deemed “voluntarily separated” from employment, the statutory right to a hearing. Ga. Dep’t of Cmty. Health v. Dillard, 313 Ga. App. 782, 723 S.E.2d 23 (2012).

Those portions of Ga. Pers. Bd. R. & Regs., Reg. 478-1-.24(6)(e) and (x) which dispense with the need for an evidentiary hearing in cases involving the voluntary separation of a classified employee are contrary to law; the curtailed procedure laid out in Ga. Pers. Bd. R. & Regs., Reg. 478-1-.24(6)(e) and (x) cannot be reconciled with either the statutory scheme, which contemplates that the State Personnel Board must provide the classified employee with reasons for the action and an opportunity to file an appeal and re-

quest a hearing, the Georgia Merit System Act, O.C.G.A. § 45-20-8(b), or the rule’s own more general procedures, which require that, within seven days of the filing of an appeal, the administrative law judge or the board shall designate an appropriate time and place to conduct the hearing. Ga. Dep’t of Cmty. Health v. Dillard, 313 Ga. App. 782, 723 S.E.2d 23 (2012).

Board authorized to reinstate dismissal by appointing authority. — When the State Personnel Board, in reviewing the decision of an administrative law judge (ALJ) decreasing the sanction imposed on a state employee from dismissal to a 30-day suspension, reimposed the dismissal, it was error for a trial court to find that the board’s decision was not supported by a sufficient rationale; the board properly adopted findings and conclusions of the ALJ which were consistent with the board’s own decision and then explained that the ALJ’s recommended sanction was too lenient for the proved misconduct, as the misconduct was so severe as to warrant dismissal, so the board’s decision was within the board’s broad authority to impose sanctions on state employees under O.C.G.A. § 45-20-8(d). Ga. Dep’t of Natural Res. v. Willis, 274 Ga. App. 801, 619 S.E.2d 335 (2005).

45-20-9. Procedure for conduct of hearings and appeals relating to adverse personnel actions.

(a) Any laws to the contrary notwithstanding, all hearings on dismissals, other adverse personnel actions, and other purported violations of the rules and regulations as applied to classified employees shall be instituted by filing a written appeal with the Office of State Administrative Hearings upon such ground and in such form and under such procedure as may be prescribed by rules and regulations of the office. The party appealing and the department from whose action the appeal is taken shall be notified in writing within 15 days from the

filing of the appeal that an appeal has been filed and the time for which a hearing is scheduled.

(b) The State Personnel Board, any member of the board, or an administrative law judge shall have the authority to do the following in connection with any hearing on a dismissal or other purported violation of the rules and regulations: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of the board's jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the board or the administrative law judge.

(c) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court. Once issued a subpoena may be quashed by the board or an administrative law judge if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant, that the testimony or documents sought are not material, that to respond to the subpoena would be unduly burdensome, or that for other good reasons basic fairness dictates that the subpoena should not be enforced.

(d) With respect to all hearings before the board or the administrative law judge:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts of Georgia shall be followed. Evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request and at

the discretion of the administrative law judge or board, parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct such cross-examination as shall be required for a full and true disclosure of the facts; and

(4) Official notice may be taken of judicially recognizable facts. In addition, official notice may be taken of technical facts within the board's specialized knowledge. Parties shall be notified either before or during the hearing by reference in preliminary reports or otherwise of the material officially noticed, including any staff memoranda or data; and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(e)(1) With respect to hearings at which the board did not preside at the presentation of the evidence, the administrative law judge who presided shall issue an initial decision within 30 days from the close of the evidence or if necessary within a longer period of time as ordered by the board or the administrative law judge. The initial decision shall be transmitted to the board, and copies shall be sent to the parties or their representatives. In the absence of an application for review from an adversely affected party to the board within 30 days from the date the initial decision was issued or in the absence of an order by the board within such time for review on its own motion, the decision shall become the decision of the board without further proceedings or notice; and any right of additional appeals shall be extinguished.

(2) On review of the entire record from the administrative law judge, the board shall have all the powers it would have in presiding at the reception of the evidence, including the review of any motions granted or denied by the administrative law judge and including the review of any action taken by the administrative law judge. Both parties shall have the right to present oral arguments to the board. Any presentation to the board on the matter by an administrative law judge shall be made in the presence of the parties. No administrative law judge shall be present during the board's deliberations and voting on the application. At its discretion, the board may take additional testimony or remand the matter to the administrative law judge for such purpose.

(f) Unless precluded by law, informal disposition of any proceeding before the board or the administrative law judge may be made by stipulation, agreed settlement, consent order, or default.

(g) As a part of the initial decision or order subsequent to any hearing, the administrative law judge or the board shall include

findings of fact and conclusions of law separately stated and the effective date of the decision or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Copies of the decision or order shall be mailed to all parties of record.

(h) Any party, including the state and any state board, bureau, commission, or department, who has exhausted all administrative remedies available before the board and who is aggrieved by a final decision or order of the board on any hearing may seek judicial review of the final decision or order of the board in the superior court of the county of the place of employment of the employee.

(i) Proceedings for review shall be instituted by filing a petition with the court within 30 days after the decision or order is rendered. Copies of the petition shall be served upon the board and all parties of record. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision of the board, and the grounds upon which the petitioner contends the decision or order should be reversed or remanded. The petition may be amended with leave of court.

(j) Within 30 days after the service of the petition or within further time allowed by the court, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(k) The filing of the petition shall stay the enforcement of the board's decision or order.

(l) If before the date set for hearing the appeal by the superior court application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the board, the court may order that the additional evidence be taken before the board upon conditions determined by the court. The board may modify its findings and decision or order by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions and orders with the reviewing court.

(m) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court may affirm the decision or order of the board

or remand the case for further proceedings. The court may reverse the decision or order of the board if substantial rights of the petitioner have been prejudiced because the board's findings, inferences, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the board;
- (3) Made upon unlawful procedure;
- (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (5) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(n) A party aggrieved by an order of the court in a proceeding authorized under this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5. (Ga. L. 1976, p. 1547, § 4; Ga. L. 1979, p. 780, §§ 5-7; Ga. L. 1982, p. 3, § 45; Ga. L. 1990, p. 8, § 45; Ga. L. 1997, p. 844, § 3; Ga. L. 1998, p. 823, § 2; Ga. L. 2008, p. 546, § 8/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (a), substituted "as applied to classified employees" for "in the several departments which are included in the career service" in the first sentence; and, in subsection (b), deleted "in the several departments which are included in the career service" following "rules and regulations" near the middle.

The 2012 amendment, effective July 1, 2012, in paragraph (d)(1), substituted "prudent persons" for "prudent men" in the third sentence, and purported to delete "proceedings" following "board" near the beginning of the fourth sentence; and added "and" at the end of paragraph (d)(3).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Denial of an evidentiary hearing, etc.

Trial court did not err when the court held that the State Personnel Board exceeded its authority in adopting regulations authorizing an administrative law judge to resolve an appeal from the board's termination of a classified state employee without holding an evidentiary hearing because the regulation at issue,

Ga. Pers. Bd. R. & Regs., Reg. 478-1-.24(6)(e) and (x), did not comport with the Georgia Merit System Act, O.C.G.A. §§ 45-20-8 and 45-20-9, in that it denied the employee, who had been deemed "voluntarily separated" from employment, the statutory right to a hearing. *Ga. Dep't of Cmty. Health v. Dillard*, 313 Ga. App. 782, 723 S.E.2d 23 (2012).

Those portions of Ga. Pers. Bd. R. &

Regs., Reg. 478-1-24(6)(e) and (x) which dispense with the need for an evidentiary hearing in cases involving the voluntary separation of a classified employee are contrary to law; the curtailed procedure laid out in Ga. Pers. Bd. R. & Regs., Reg. 478-1-24(6)(e) and (x) cannot be reconciled with either the statutory scheme, which contemplates that the State Personnel Board must provide the classified employee with reasons for the action and an opportunity to file an appeal and request a hearing, the Georgia Merit System Act, O.C.G.A. § 45-20-8(b), or the Rule's own more general procedures, which require that, within seven days of the filing of an appeal, the administrative law judge or the board shall designate an appropriate time and place to conduct the hearing. *Ga. Dep't of Cmty. Health v. Dillard*, 313 Ga. App. 782, 723 S.E.2d 23 (2012).

The “clearly erroneous” standard of O.C.G.A. § 45-20-9(m) is the same as the “any evidence rule.”

When the State Personnel Board, in reviewing the decision of an administrative law judge (ALJ) decreasing the sanc-

tion imposed on a state employee from dismissal to a 30-day suspension, reimposed the dismissal, it was error for a trial court to find that the board's decision was not supported by a sufficient rationale; the board had properly adopted findings and conclusions of the ALJ which were consistent with the board's own decision and then explained that the ALJ's recommended sanction was too lenient for the proved misconduct as the misconduct was so severe as to warrant dismissal so the board's decision was not arbitrary and capricious under O.C.G.A. § 45-20-9(m)(5). *Ga. Dep't of Natural Res. v. Willis*, 274 Ga. App. 801, 619 S.E.2d 335 (2005).

Review of school instructor's dismissal. — State Personnel Board was authorized to reverse an administrative law judge's (ALJ) determination upholding a school instructor's dismissal, as O.C.G.A. § 45-20-9(e)(2) comprehensively and specifically regulated the board's authority in its review of an ALJ's initial decision following a dismissal or adverse personnel action hearing. *Ga. Dep't of Educ. v. Niemeier*, 274 Ga. App. 111, 616 S.E.2d 861 (2005).

45-20-10. Collection, compilation, consolidation, and submission of certain personnel data.

The DOAS shall routinely collect from agencies required under law to submit a quarterly budget to the Office of Planning and Budget data including the number of personnel, salaries, length of service, distribution of employees by filled and unfilled full-time employee positions at the budgetary program level, and other pertinent personnel information for the subsequent fiscal year as prescribed by the Governor. The commissioner shall compile, consolidate, and submit the data to the Office of Planning and Budget as needed. (Ga. L. 1975, p. 79, § 8; Ga. L. 1976, p. 1547, § 5; Ga. L. 1982, p. 3, § 45; Ga. L. 1998, p. 823, § 3; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, rewrote this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of

Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-11 and 45-20-12.

Reserved. Repealed by Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012.

Editor's notes. — These Code sections, concerning audits of State Personnel Administration, reports of audit findings, and implementation of leadership development courses, Governor's Executive Leadership Institute were based on Ga. L. 1975, p. 79, § 9; Ga. L. 1976, p. 338; Ga. L. 1985, p. 1120, § 1; Ga. L. 2005, p. 1036, § 32/SB 49; Ga. L. 2008, p. 546, § 9/SB 230; Ga. L. 2009, p. 745, §§ 1, 2/SB 97.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and

facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-13 and 45-20-14.

Reserved. Repealed by Ga. L. 2008, p. 546, §§ 10, 11, effective May 12, 2008.

Editor's notes. — These Code sections, concerning penalties for violations of article or rules or regulations promulgated thereunder generally, the effect of misdemeanor conviction and the rights of merit system officers and employees continued,

were based on Ga. L. 1975, p. 79, §§ 11, 12; Ga. L. 1990, p. 8, § 45.

Ga. L. 2012, p. 446, § 1-1/HB 642, reenacted the reservation of these Code sections without change.

45-20-15. Confidentiality of information received by staff in counseling; exceptions.

Reserved. Repealed by Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012.

Editor's notes. — This Code section was based on Code 1981, § 45-20-15, enacted by Ga. L. 1984, p. 583, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 1990, p. 8, § 45; Ga. L. 2008, p. 546, § 12/SB 230; Ga. L. 2009, p. 745, §§ 1, 3/SB 97.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30,

2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-16. Rules for accrual of leave, holidays, and compensation for closing of state offices; utilization of accumulated sick leave; conversion to and use of personal leave; disapproval of sick leave; procedure for contesting disapproval; regain of forfeited sick leave after reemployment.

(a) As a part of employee compensation, the board shall establish rules for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees in accordance with such rules.

(b) Any employee who has accumulated sick leave shall be authorized to utilize such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board; provided, however, that whenever an employee is sick and absent from work, the employee may be required to report each day by telephone to the appropriate authority. An employee shall not be required to provide documentation for the use of less than 17 hours of sick leave in any 30 day period, unless the employee has demonstrated excessive or abusive use of sick leave. The State Personnel Board shall establish rules and regulations that define excessive or abusive use.

(c) An employee who has accrued more than 15 days of sick leave as of November 30 of any year may, by written notification to the appointing authority by no later than December 31 of that year, convert up to three days of accrued sick leave in excess of 15 days to personal leave. Any personal leave not used by December 31 of the following year, or upon termination, shall be forfeited and not restored to the employee.

(d) Personal leave may be used by the employee for personal reasons the same as annual leave upon approval by the employee's appointing authority. The employee shall normally be required to provide the appointing authority with a 24 hour advance notice for use of personal leave. Every reasonable effort shall be made by the appointing authority to accommodate employees on their requests for use of personal leave.

(e) If the appointing authority disagrees with the claim of sickness or need to utilize sick leave made by the employee pursuant to subsection (d) of this Code section, the appointing authority may disapprove the use of such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board. The employee may

contest the disapproval of the sick leave through the department's employee complaint procedure.

(f) Any nontemporary employee in classified or unclassified service who forfeits accumulated sick leave as a result of withdrawal from employment with the state shall be entitled to regain such accumulated sick leave after such employee returns to state employment and remains in service for a period of two consecutive years.

(g) The State Personnel Board shall adopt regulations to implement the provisions of this Code section. The leave regulations of the board in effect on July 1, 1991, and not in conflict with this Code section shall remain in effect until amended, changed, modified, or repealed by the board. (Code 1981, § 45-20-16, enacted by Ga. L. 1989, p. 1582, § 1; Ga. L. 1990, p. 1341, § 1; Ga. L. 1993, p. 721, § 1; Ga. L. 2000, p. 1377, § 3; Ga. L. 2003, p. 412, § 1; Ga. L. 2008, p. 546, § 13/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2003 amendment, effective July 1, 2003, added subsection (f) and redesignated former subsection (f) as present subsection (g).

The 2008 amendment, effective May 12, 2008, in subsection (a), deleted "in the classified service" following "nontemporary employees" at the end of the first sentence and substituted "accordance with State Personnel Board rules" for "the unclassified service in the same manner and amount provided for employees in the classified service" at the end of the second sentence; and, in subsection (b), deleted "in the classified service" following "employee" near the beginning of the first sentence.

The 2012 amendment, effective July 1, 2012, in subsection (a), substituted "the board" for "the State Personnel Board" in

the first sentence, and substituted "such rules" for "State Personnel Board rules" in the last sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-17. Interdepartmental transfers.

Reserved. Repealed by Ga. L. 2008, p. 546, § 14, effective May 12, 2008.

Editor's notes. — This Code section was based on Code 1981, § 45-20-17, enacted by Ga. L. 1990, p. 732, § 4.

Ga. L. 2012, p. 446, § 1-1/HB 642, reenacted the reservation of this Code section without change.

45-20-18. Loss of eligibility for wage incentive payment due to abuse of member of public.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, reenacted this Code section without change. Refer to bound volume for text of this Code section.

45-20-19. Termination or elimination of positions or employees through reduction in force.

(a) This subsection shall apply whenever any department or agency proposes to terminate the employment of one or more classified employees through a reduction in force. No termination subject to this subsection shall become effective until at least 30 days after the affected employee has been notified in writing by the department or agency. Such notice must contain at a minimum:

(1) A statement of the nature of the proposed action to be taken with respect to the affected employee;

(2) An explanation of the rights of the affected employee due to the proposed reduction in force, including any right of appeal, or other opportunities regarding possible continued employment, any opportunities to apply for employment with any public or private party assuming the functions of the employee, or any other similar opportunities; and

(3) An explanation of the affected employee's rights and options regarding his or her employment benefits, including but not limited to any right to continued participation in any retirement system or insurance plan.

(b) This subsection shall apply whenever any department or agency proposes to eliminate 25 or more positions or terminate 25 or more employees through a reduction in force. At least 15 days prior to giving the employee notice, the department or agency shall give written notice to the President of the Senate and the Speaker of the House of the proposed reduction in force. Such notice shall:

(1) Identify the facilities and operations to be affected and the estimated number of employees to be affected; and

(2) State the reasons for the proposed action.

(c) Subsections (a) and (b) of this Code section shall not apply to a reduction in force which must become effective immediately because the department or agency has insufficient funds available to pay the salaries of the affected employees. (Code 1981, § 45-20-19, enacted by Ga. L. 1997, p. 853, § 1; Ga. L. 2008, p. 546, § 15/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, substituted “nontemporary” for “classified” throughout this Code section and deleted “under State Personnel Board rules” following “reduction in force” from the end of the first sentences in the introductory paragraphs of subsections (a) and (b).

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, deleted “eliminate one or more nontemporary positions or” following “agency proposes to”, and substituted “classified employees” for “nontemporary employees”, in the second sentence, deleted “position elimination or employment” following “No” at the beginning, and substituted “shall” for “may” near the middle; substituted “regarding” for “with respect to” in paragraphs (a)(2) and (a)(3); substituted “employee due to” for “employee with respect to” in paragraph

(a)(2); and, in subsection (b), deleted “nontemporary” following “25 or more” in two place in the first sentence, and deleted “required by subsection (a) of this Code section” following “the employee notice” in the second sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-20. Eligible employees must register with Selective Service System; exemptions.

(a) As used in this Code section, the term:

(1) “Employing unit” means that budget unit under the Appropriations Act through which an officer or employee receives compensation for services rendered as such officer or employee.

(2) “Federal law” means Section 3(a) of the Military Selective Service Act (50 App. U.S.C.A. 451, et seq.).

(b) A state officer, other than an elected officer whose office is created by the Constitution, shall not be eligible to take office if such person is a male between 18 and 26 years of age unless, prior to taking the oath of office, such person presents proof to the Secretary of State of having registered with the Selective Service System as required by federal law or of being exempt from such registration.

(c) A person employed by the state before July 1, 1998, other than an officer specified or exempted by subsection (b) of this Code section, who is a male between 18 and 26 years of age shall be terminated for cause unless, by January 1, 1999, such person presents proof to the employing unit of state government of having registered with the Selective Service System as required by federal law or of being exempt from such registration.

(d) A person shall not be hired as an employee of the state on or after July 1, 1998, other than an officer specified or exempted by subsection

(b) of this Code section, if that person is a male between 18 and 26 years of age unless, prior to such hiring, such person presents proof to the employing unit of state government of having registered with the Selective Service System as required by federal law or of being exempt from such registration. (Code 1981, § 45-20-20, enacted by Ga. L. 1998, p. 1031, § 1; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “shall” for “may” near the beginning of subsection (d).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of

Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-21. Performance management system.

The State Personnel Board shall provide for a performance management system for the periodic review and rating of the quality and quantity of work performed by employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the review and rating of the quality and quantity of work performed by employees. (Code 1981, § 45-20-21, enacted by Ga. L. 2000, p. 1377, § 4; Ga. L. 2008, p. 546, § 16/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in the first sentence, deleted “classified” preceding “employees.”; and, in the second sentence, deleted “and of any agency which employed no classified employees as of July 1, 1996” following “University System of Georgia” near the

middle and deleted “in the unclassified service in the same manner as employees in the classified service” following “performed by employees” at the end.

Editor’s notes. — Ga. L. 2012, p. 446, § 1-1, effective July 1, 2012, reenacted this Code section without change.

ARTICLE 2

LEAVES OF ABSENCE

45-20-30. Leave of absence for blood donation.

Editor’s notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

45-20-31. Leave of absence for organ or bone marrow donation.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

ARTICLE 3**VOLUNTARY DEDUCTIONS FROM WAGES OR SALARIES OF
STATE EMPLOYEES FOR BENEFIT OF CHARITABLE
ORGANIZATIONS****45-20-50. Purpose of article.**

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

45-20-51. Definitions.

As used in this article, the term:

(1) "Agency" means any agency, as defined in Code Section 45-20-2, which has full-time paid state employees and, in addition thereto, shall include the board of regents, all units of the university system, public authorities, and public corporations.

(2) "Charitable organization" means any voluntary health, welfare, educational, or environmental restoration or conservation agency that is:

(A) A private, self-governing, nonprofit organization chartered or authorized to do business in the State of Georgia by the office of the Secretary of State;

(B) Exempt from taxation under Code Section 48-7-25;

(C) One to which contributions are authorized as deductible by Section 170 of the United States Internal Revenue Code, as amended;

(D) Qualified as an organization as defined in Section 501(c)(3) of the United States Internal Revenue Code; and

(E) Not a religious organization except that a religious organization is not disqualified to the extent that it operates a health, welfare, educational, or environmental restoration or conservation function on a nonsectarian basis with a distinct and separate budget for this function.

(3) "Eligible voluntary charitable organization" means a charitable organization which:

(A) Actively conducts health, welfare, educational, or environmental restoration or conservation programs and provides services to individuals directed at one or more of the following common human needs within a community: family and child care services; protective services for children and adults; services for children and adults in foster care; services related to the management and maintenance of the home; day-care services for adults; transportation services; information, referral, and counseling services; the preparation and delivery of meals; adoption services; emergency shelter, care, and relief services; safety services; neighborhood and community organization services; recreation services; social adjustment and rehabilitation services; health support services; or a combination of such services designed to meet the special needs of specific groups such as children and youth, the aged, the ill and infirm, or the physically disabled; or provides services concerned with the ecological impact of altering the environment; or provides services concerned with the cultivation or imparting of knowledge or skills;

(B) Provides direct and substantial services on a state-wide basis; is one of the federated charitable organizations that coordinates fund raising and allocations for at least five local charitable organizations in the various geographic areas in which employees are solicited; is a federation of at least five state-wide and local charitable organizations which are otherwise qualified under this article and which federation expends all funds collected under this article to serve Georgia residents and programs; is a health, welfare, educational, or environmental restoration or conservation agency which is a member of a federated, nonsectarian, nonpolitical, eligible voluntary charitable organization subject to such rules and regulations as the board may prescribe; or is a federated charitable organization that provides direct and substantial health and welfare services internationally whose activities do not require a local presence or provision of local services, which is authorized and certified by the Secretary of State to transact business in Georgia, which is compliant with the U.S. Office of Personnel Management's regulations issued pursuant to the authority of 5 C.F.R. 950.201 and 950.202 for charities participating in the Combined Federal Campaign, which has a registered agent in Georgia, and which otherwise meets the criteria of this paragraph;

(C) Observes a policy and practice of nondiscrimination on the basis of race, color, religion, sex, national origin, or disability, and such policy is applicable to persons served by the agency, to agency staff employment, and to membership on the agency's governing board; and

(D) Does not expend a substantial portion of its efforts to influence the outcome of elections or the determination of public policy.

No charitable organization shall be approved by the State Personnel Board under more than one provision of subparagraph (B) of this paragraph.

(4) "Employee" means any person receiving a payroll check from the state for personal service to an agency. (Ga. L. 1982, p. 2274, § 2; Code 1981, § 45-20-51, enacted by Ga. L. 1982, p. 2274, § 9; Ga. L. 1983, p. 3, § 34; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 878, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1994, p. 567, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1996, p. 769, § 1; Ga. L. 2004, p. 499, § 1; Ga. L. 2012, p. 446, § 1-1/1HB 642.)

The 2004 amendment, effective July 1, 2004, added "; or is a federated charitable organization that provides direct and substantial health and welfare services internationally whose activities do not require a local presence or provision of local services, which is authorized and certified by the Secretary of State to transact business in Georgia, which is compliant with the U.S. Office of Personnel Management's regulations issued pursuant to the authority of 5 C.F.R. 950.201 and 950.202 for charities participating in the Combined Federal Campaign, which has a registered agent in Georgia, and which otherwise meets the criteria of this paragraph" at the end of subparagraph (3)(B).

The 2012 amendment, effective July

1, 2012, substituted "and such policy" for "which policy" in subparagraph (3)(C).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/1HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/1HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-52. Board as policy-setting body for administration of article; rules and regulations for implementation of article.

The board shall set policy for administration of this article and shall have full power to promulgate, adopt, amend, or revoke such rules and regulations consistent with this article as may be necessary to implement this article. The board shall have specific authority to establish procedures under which charitable organizations may be evaluated for inclusion in the charitable deductions program. Only eligible voluntary charitable organizations which are approved by the board may participate in the program. Such procedures may include minimum participation levels based upon number of employees making a designated contribution, dollar amounts of designated contributions, or other factors as decided by the board and may exclude otherwise eligible charitable organizations for failure to attain a minimum participation

level. (Ga. L. 1982, p. 2274, § 3; Code 1981, § 45-20-52, enacted by Ga. L. 1982, p. 2274, § 9; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “The board shall set policy” for “The State Personnel Board shall serve as the policy setting body” at the beginning of the first sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-53. Deduction from salaries or wages for contribution to charitable organizations.

(a) Any agency is authorized to deduct from the salaries or wages of its employees amounts designated by the employee for the purpose of contribution to charitable organizations. No such deduction procedure shall be implemented without the approval of the chief executive officer or governing board of the agency.

(b) No deduction shall be made without the written request of the employee which shall designate the amount which is to be deducted. Deductions shall be made monthly or to coincide with each pay period as determined by the agency. No deduction shall be made for less than \$1.00 per deduction period or for less than \$1.00 per designated charitable organization. Employees shall be clearly apprised, on solicitation materials, of the manner in which funds will be distributed. All deduction authorizations shall remain continuously in effect until changed or canceled in writing by the employee. No deduction shall be made for the benefit of any organization which fails to secure approval of the board. (Ga. L. 1982, p. 2274, § 4; Code 1981, § 45-20-53, enacted by Ga. L. 1982, p. 2274, § 9; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “employee which shall” for “employee, which request” in the first sentence of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-54. Disclosure of amounts or designations of authorized charitable deductions; pressure, coercion, or intimidation of employee with reference to deductions.

(a) No person shall disclose to any other person names of contributors or the amounts or designations of authorized charitable deductions of another, except as is necessary to accomplish the purpose of this article or as otherwise authorized in writing by the person whose contributions are sought to be disclosed. This prohibition against disclosure shall not, however, bar appropriate state or federal tax authorities from access necessary to establish the tax status of charitable organizations receiving these funds.

(b) No person shall pressure, coerce, or in any way intimidate any employee to have charitable deductions made from the employee's salary or with reference to the amount of deductions to be made. Each agency shall review any violations or alleged violations of this subsection and assure that appropriate action is taken. Such action may include, without being limited to, discharge from employment, consistent with policies of the agency and with rules and regulations of the board. (Ga. L. 1982, p. 2274, § 5; Code 1981, § 45-20-54, enacted by Ga. L. 1982, p. 2274, § 9; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted "the" near the end of subsection (b).

45-20-54.1. Promulgation of regulations regarding distribution of deducted funds; disposition of undesignated funds.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change. Refer to bound volume for text of this Code section.

45-20-55. Reimbursement of cost of making deductions and remitting proceeds; delegation of activities related to management of funds.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change. Refer to bound volume for text of this Code section.

45-20-56. Deduction and transmittal of funds as privilege; immunity from liability to employee or charitable organization for errors, omissions, or decisions regarding deductions; board as sole judge of eligibility of charitable organizations.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

ARTICLE 4

EMPLOYEE ASSISTANCE PROGRAM

45-20-70. "Employee assistance program" defined.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1/HB 642, effective July 1, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

45-20-70.1. Program authorized.

The board is authorized in its discretion to establish an employee assistance program for all state employees and to adopt and promulgate rules and regulations for its administration. (Code 1981, § 45-20-70.1, enacted by Ga. L. 1988, p. 13, § 45; Ga. L. 2000, p. 1377, § 5; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "The board" for "The State Personnel Board" at the beginning of this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-71. Confidentiality of program related records or activities.

Program related records or activities which might disclose the nature of the services provided an employee or the identity of an employee utilizing the program shall be maintained on a confidential basis. Such records shall be produced only when the commissioner or his or her designee is satisfied it is needed to respond to a life-threatening or medical emergency or when written release is given by that employee. (Code 1981, § 45-20-71, enacted by Ga. L. 1987, p. 990, § 1; Ga. L. 2000, p. 1377, § 5; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, in the second sentence, deleted “of personnel administration” following “commissioner” near the middle, and substituted “that employee” for “an employee” near the end.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 5

RANDOM DRUG TESTING OF EMPLOYEES IN HIGH-RISK JOBS

Cross references. — Drug testing of recipients of TANF benefits, § 49-4-193.

45-20-90. Definitions.

As used in this article, the term:

(1) “Employee” means any employee required to be certified under the provisions of Chapter 8 of Title 35 receiving a salary or hourly wage from any state agency, department, commission, bureau, board, or authority. “Employee” shall also include any certified employee working under a personnel contract to provide personnel services, including but not limited to medical, security, or transportation services to a state or other public agency.

(2) “Established drug test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations 53 Fed. Reg. 11979, et seq., as amended) or other professionally valid procedures approved by the board.

(3) “High-risk work” means those duties where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public.

(4) “Illegal drug” means marijuana as defined in paragraph (16) of Code Section 16-13-21, as amended; a controlled substance as defined in paragraph (4) of Code Section 16-13-21, as amended; a dangerous drug as defined in Code Section 16-13-71, as amended; or any other controlled substance or dangerous drug that persons are prohibited from using. The term “illegal drug” shall not include any drug when used pursuant to a valid medical prescription or when used as otherwise authorized by state or federal law. (Code 1981, § 45-20-90,

enacted by Ga. L. 1990, p. 2028, § 1; Ga. L. 2008, p. 546, § 17/SB 230; Ga. L. 2009, p. 453, § 2-19/HB 228; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, deleted “and shall include all such certified employees whether or not such certified employees are covered by the rules and regulations of the State Personnel Board” following “authority” at the end of the first sentence in paragraph (1).

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Board” for “commissioner of human resources” at the end of paragraph (2).

The 2012 amendment, effective July 1, 2012, substituted “the board” for “the State Personnel Board” at the end of paragraph (2).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-20-91. Determination of employees subject to testing.

(a) Employees working in high-risk jobs shall be subject to random testing for evidence of use of illegal drugs.

(b) The head of each state agency, department, commission, board, bureau, or authority, in conjunction with the DOAS, shall determine those positions and groups of positions whose occupants regularly perform high-risk work where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public. This Code section shall not be construed to include employees who do not regularly perform high-risk work regardless of the fact that other employees in the same classification do perform such high-risk work. (Code 1981, § 45-20-91, enacted by Ga. L. 1990, p. 2028, § 1; Ga. L. 2008, p. 546, § 18/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (b), deleted the former last sentence, which read: “With regard to positions covered under the classified service of the State Merit System of Personnel Administration, the department head shall consult with the commissioner of personnel administration before making such determination and shall notify the commissioner of any such determination.”

The 2012 amendment, effective July 1, 2012, inserted “, in conjunction with the

DOAS,” near the middle of the first sentence of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not

codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be

transferred as provided in Code Section 45-12-90."

45-20-92. Rules adopted by State Personnel Board; certification of testing laboratories.

(a) The State Personnel Board shall adopt rules to establish:

(1) The portion of employees in the high-risk work group that may be selected at random for testing at each testing period;

(2) Methods for assuring that employees are selected for testing on a random basis;

(3) Methods for assuring that privacy intrusions are minimized during collection of body fluid specimens;

(4) Methods for assuring that any body fluid specimens are stored and transported to testing laboratories at proper temperatures and under such conditions that the quality of the specimens shall not be jeopardized;

(5) Methods for assuring that the identity of employees whose tests show the usage of an illegal drug is limited to the staff who are entitled to this information; and

(6) The identification of those persons entitled to the information and shall adopt such other rules as it may deem appropriate to carry out the purposes of this article. The board may, in its discretion, delegate to the commissioner such authority as appropriate to carry out the purposes of this article.

(b) The commissioner shall establish and maintain a list of those laboratories qualified to conduct established drug tests and shall determine which illegal drugs will be the subject of testing; provided, however, that no laboratory shall be so certified unless that laboratory, on a daily basis, adds to its urine testing program a minimum of 10 percent blind test specimens. (Code 1981, § 45-20-92, enacted by Ga. L. 1990, p. 2028, § 1; Ga. L. 2008, p. 546, § 19/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (a), substituted "The State" for "For employees in the classified service of the State Merit System of Personnel Administration, the State" at the beginning of the introductory paragraph; deleted former subsection (b), relating to establishing policies to select employees at random for testing; and re-

designated former subsection (c) as present subsection (b).

The 2012 amendment, effective July 1, 2012, deleted "of personnel administration" following "commissioner" in the undesignated paragraph at the end of subsection (a).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-20-93. Grounds for termination from employment.

(a) Any employee conducting high-risk work found to have used an illegal drug shall be terminated from his or her employment.

(b) Any employee who refuses to provide body fluid specimens, when requested to do so in accordance with the random drug testing conducted pursuant to this article and administrative rules and regulations promulgated under this article, shall be terminated from his or her employment. (Code 1981, § 45-20-93, enacted by Ga. L. 1990, p. 2028, § 1; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted "specimens" near the beginning of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Admin-

istrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 6

DRUG TESTING FOR STATE EMPLOYMENT

Cross references. — Drug testing of recipients of TANF benefits, § 49-4-193.

45-20-110. Definitions.

Editor's notes. — Ga. L. 2012, p. 446, § 1-1, effective July 1, 2012, reenacted

this Code section without change. Refer to bound volume for text of this Code section.

45-20-111. Analysis of positions warranting established test; testing requirements, cost, and procedure; disqualification from employment for refusing test or showing positive results.

(a) The head of each agency, department, commission, bureau, board, college, university, institution, or authority shall ensure an analysis is

completed on all jobs in his or her organization to determine those positions whose duties and responsibilities warrant conducting an established test for illegal drugs in accordance with the provisions of this Code section. The analysis must be completed by July 1, 1995. All jobs established after this date must undergo a similar analysis no later than six weeks after establishment. An applicant for a designated position shall undergo a drug test consistent with these provisions.

(b) An applicant for state employment who is offered employment in a position designated by the head of the agency, department, commission, bureau, board, college, university, institution, or authority as requiring a drug test shall, prior to commencing employment or within ten days after commencing employment, submit to an established test for illegal drugs. All costs of such testing shall be paid from public funds by the employing agency or unit of state government. Any such test which indicates the presence of illegal drugs shall be followed by a confirmatory test using gas chromatography/mass spectrometry analysis. If the results of the confirmatory test indicate the presence of illegal drugs, such results shall be reviewed and interpreted by a medical review officer to determine if there is an alternative medical explanation. If the applicant provides appropriate documentation and the medical review officer determines that it was a legitimate usage of the substance, the result shall be reported as negative. Any applicant who fails to provide an alternative medical explanation shall be reported by the medical review officer as having a positive test result. Any applicant offered employment who refuses to submit to an established test for illegal drugs or whose test results are positive shall be disqualified from employment by the state. Such disqualification shall not be removed for a period of two years from the date that such test was administered or offered, whichever is later. The board shall develop rules for the administration of the test and any verification procedures. Other covered units of state government shall also develop rules governing these procedures. The results of such tests shall remain confidential and shall not be a public record unless necessary for the administration of these provisions or otherwise mandated by other state or federal law. (Code 1981, § 45-20-111, enacted by Ga. L. 1995, p. 667, § 3; Ga. L. 2008, p. 546, § 20/SB 230; Ga. L. 2012, p. 446, § 1-1/HB 642.)

The 2008 amendment, effective May 12, 2008, in subsection (a), deleted the former last sentence, which read: "Organizations with positions covered under the classified service of the state merit system shall consult with the commissioner of personnel administration before making final determinations and shall provide the commissioner with a list of designated positions and accompanying documenta-

tion and analysis."; and, in subsection (b), deleted "for positions covered under the state merit system" following "verification procedures" at the end of the ninth sentence.

The 2012 amendment, effective July 1, 2012, substituted "The board" for "The State Personnel Board" at the beginning of the ninth sentence of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

CHAPTER 21

EMPLOYEES' SUGGESTION AND MERITORIOUS AWARDS PROGRAM

Sec.		Sec.	
45-21-1.	Definitions.	45-21-7.	Awards to employees.
45-21-2.	Establishment of employees' suggestion and awards program; implementation.	45-21-8.	Costs to be borne by board and appointing authorities.
45-21-3.	Preparation of rules.	45-21-9.	Incentive payments not to be included in calculation of retirement benefits.
45-21-5.	Creation of agency committees; agency committees to review suggestions and report to commissioner.		

45-21-1. Definitions.

As used in this chapter, the term:

- (1) "Agency" means any agency as defined in Code Section 45-20-2, any authority, or any public corporation, but shall not include the board of regents and units of the University System of Georgia.
- (2) "Appointing authority" means a person or group of persons authorized by law or delegated authority to make appointments to fill employee positions in the legislative, judicial, or executive branch of state government.
- (3) "Board" means the State Personnel Board.
- (4) "Commissioner" means the commissioner of administrative services or his or her designee.
- (5) "Goal based plan" means a plan developed by the board or other appointing authority under subsection (d) of Code Section 45-21-2 designed to measure performance against business objectives or performance targets.
- (6) "Incentive compensation plan" means a plan developed by the board under Chapter 20 of this title and subsection (c) of Code Section

45-21-2 or other appointing authority under subsection (c) of Code Section 45-21-2.

(7) "Incentive payment" means a one-time lump sum payment or a predetermined quarterly payment that does not become a part of base salary.

(8) "Meritorious award program" means a program developed by the board or other appointing authority under subsection (b) of Code Section 45-21-2. (Ga. L. 1957, p. 336, § 1; Ga. L. 1959, p. 23, § 1; Ga. L. 1973, p. 794, § 1; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472; Ga. L. 2012, p. 446, § 2-82/HB 642.)

The 2006 amendment, effective May 3, 2006, substituted the present provisions of paragraph (5) for the former provisions, which read: "Incentive award program" means a program developed by the board or other appointing authority under subsection (b) of Code Section 45-21-2."; inserted "or a predetermined quarterly payment" in paragraph (7); and added paragraph (8).

The 2012 amendment, effective July 1, 2012, substituted "commissioner of administrative services" for "commissioner of personnel administration" in paragraph (4).

Editor's notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

45-21-2. Establishment of employees' suggestion and awards program; implementation.

(a) The board may formulate, establish, and maintain employees' meritorious award programs, incentive compensation plans, and goal based plans to encourage state employees to improve the operation and perception of state government and its instrumentalities.

(b) The board may establish meritorious award programs for agencies for:

(1) Employees who perform a special, extraordinary service, act, or achievement in the public interest, beyond the ordinary demands of duty, and in connection with or related to state government or its instrumentalities. Without limitation but as illustrations, when these criteria are satisfied such awards may be made for:

(A) Heroism;

(B) Response to an unanticipated problem or opportunity for the state employer;

(C) Service or an act or achievement which particularly enhances public perception of state government; or

(D) Innovative or unique success where other efforts have failed or where experts said a job could not be done; and

(2) Employees whose suggestions or ideas are implemented by a state department or instrumentality.

Appointing authorities of the legislative and judicial branches may also establish such meritorious award programs.

(c)(1) In providing for compensation, pay for performance, and performance management under Chapter 20 of this title, the board may provide for incentive compensation plans which authorize or direct incentive pay as follows:

(A) A one-time payment to induce the employment of a prospective employee with particularly desirable skills or attributes;

(B) A one-time payment for learning new, critically needed employment skills; and

(C) A lump sum payment for employees who surpass performance expectations.

(2) The board may impose requirements for periods of continued employment for incentive compensation plans. To receive consideration for incentive compensation for surpassing expectations under subparagraph (C) of paragraph (1) of this subsection, an employee must be in continued employment with the appointing authority or an appointing authority in the legislative, executive, or judicial branch at the time the compensation is paid.

(3) Appointing authorities for which the board does not provide for compensation, pay for performance, and performance management under Chapter 20 of this title may also establish such incentive compensation plans. This authorization shall extend without limitation to the appointing authorities of the legislative and judicial branches, state authorities, and any executive branch agency which employed no classified employees as of July 1, 1996.

(d)(1) The board or other appointing authorities shall provide for goal based plans, based on predetermined and objectively measurable criteria, that enhance the effective operation of state agencies.

(2) In providing for incentive pay for goal based plans, the board may provide for goal based plans which authorize or direct incentive pay for:

(A) Meeting or exceeding predetermined productivity standards;

(B) Meeting or exceeding predetermined sales targets; and

(C) Generating income or revenue for the state beyond established goals.

(3) Appointing authorities for which the board does not provide for compensation may also establish such goal based plans. This authorization shall extend without limitation to the appointing authorities of the legislative and judicial branches, state authorities, and any executive branch agency which employed no classified employees as of July 1, 1996. (Ga. L. 1957, p. 336, § 4; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, substituted “meritorious” for “incentive” in subsections (a) and (b); substituted “, incentive compensation plans, and goal based plans” for “and incentive compensation plans” in subsection (a);

added “and” at the end of paragraph (c)(1)(B); deleted “; and” at the end of paragraph (c)(1)(C); deleted paragraph (c)(1)(D) which read: “Goal based or incentive pay based on objectively measurable criteria.”; and added subsection (d).

45-21-3. Preparation of rules.

(a) With the approval of the board, the commissioner shall prepare rules necessary and appropriate for the proper administration of meritorious award programs, incentive compensation plans, and goal based compensation plans including rules governing the:

(1) Operation of the meritorious awards programs, incentive compensation plans and goal based compensation plans;

(2) Eligibility of employees to participate in the programs and plans;

(3) Documentation of goal based plan criteria and evaluation metrics;

(4) Method and schedule of incentive payment;

(5) Type of suggestions or extraordinary service;

(6) Method of submission of nominations or applications;

(7) Procedure for review and approval;

(8) Procedure for verifying qualification; and

(9) Procedure for determining awards amounts.

(b) The rules for meritorious awards for extraordinary service under paragraph (1) of subsection (b) of Code Section 45-21-2 shall provide for evaluation and award by the appointing authority. The rules for meritorious awards for suggestions and ideas shall comply with Code Sections 45-21-4 through 45-21-8.

(c) The commissioner shall submit the rules or any amendments thereto to the Governor. Such rules or amendments shall become effective when approved by the Governor or 15 days after they are submitted, if the Governor has not rejected them prior to that time.

(d) For appointing authorities of agencies subject to the rules of the board, meritorious awards programs, incentive compensation plans, and goal based plans shall become effective upon certification of an agency's program or plan by the commissioner and upon certification by the director of the Office of Planning and Budget that funding is available. (Ga. L. 1957, p. 336, § 5; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, substituted "meritorious" for "incentive" in subsections (a) and (b); inserted "incentive compensation plans, and goal based compensation plans" in the introductory language of subsection (a) and in paragraph (a)(1); inserted "and plans" at the end of paragraph (a)(2);

added present paragraphs (a)(3) and (a)(4); redesignated former paragraphs (a)(3) through (a)(7) as paragraphs (a)(5) through (a)(9); added "and approval" at the end of paragraph (a)(7); added "amounts" at the end of paragraph (a)(9); substituted "shall" for "will" near the middle of subsection (c); and added subsection (d).

45-21-4. Employment of staff.

Editor's notes. — Ga. L. 2006, p. 760, § 1, effective May 3, 2006, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

45-21-5. Creation of agency committees; agency committees to review suggestions and report to commissioner.

Under meritorious award programs for suggestions and ideas, each agency head shall appoint a committee to be composed of not more than three members selected from the officers and employees of the agency to review suggestions submitted which pertain to the operations of that agency. The agency committee shall, within 45 days of receipt, report to the commissioner on all suggestions submitted to it pursuant to this chapter. Such report shall contain an estimate of the value of projected annual savings to be generated by a suggestion and a statement concerning the appointing authority's plan with reference to adopting them. (Ga. L. 1957, p. 336, § 6; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, substituted "meritorious award

programs" for "incentive award programs" near the beginning of this Code section.

45-21-6. Further investigation of suggestions or ideas by commissioner; report of findings and recommendations; board to make final determination.

Editor's notes. — Ga. L. 2006, p. 760, § 1, effective May 3, 2006, reenacted this Code section without change. Refer to bound volume for text of this Code section.

45-21-7. Awards to employees.

(a)(1) Cash awards for suggestions or ideas submitted by an employee, implemented by an agency, and approved by the board which result in direct measurable cash savings or cost avoidance shall be paid to such employee in an amount equal to up to 10 percent of the first year's estimated net material and labor savings. The award shall be paid by the agency or agencies adopting the suggestion and shall be made within the fiscal year the suggestion or idea is authorized for payment. Cash awards shall be for not less than \$10.00 and for not more than \$5,000.00 regardless of the number of agencies adopting the suggestion.

(2) Suggestions involving improvements in working conditions; changes in procedures; revision of forms; improvement in employee morale, health, or safety; or related improvements for which the monetary value cannot be determined shall be eligible for award certificates or cash awards based on intangible savings.

(3) The board shall establish a method of evaluating such suggestions. Cash awards for suggestions involving intangible savings shall not exceed \$100.00.

(b) In recognition of achievements under meritorious award programs, incentive compensation plans, goal based plans, or other employee achievement, the board and other appointing authorities may award:

(1) Certificates of merit;

(2) Certificates acknowledging period of service; or

(3) Pins, buttons, or other emblems. (Ga. L. 1957, p. 336, § 8; Ga. L. 1972, p. 914, § 2; Ga. L. 1973, p. 794, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1251, § 1; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, in subsection (b), substituted "meritorious" for "incentive" and inserted "goal based plans,".

45-21-8. Costs to be borne by board and appointing authorities.

The board shall bear the costs of administration and of the certificates and emblems which it awards and appointing authorities shall bear the costs of administration and of the certificates, emblems, and meritorious awards and payments which they award. (Ga. L. 1957, p. 336, § 10; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, substituted "meritorious" for "incentive" near the end of the section.

45-21-9. Incentive payments not to be included in calculation of retirement benefits.

(a) The following incentive payments shall not be included in earnable compensation in determining retirement benefits under Chapters 2 and 3 of Title 47:

- (1) Payments under a meritorious award program;
- (2) Recruitment payments under an incentive compensation plan;
- (3) Payments for learning new, critically needed employment skills; or
- (4) Payments made under a goal based plan.

However, these incentive payments shall be included as salary in the pay period granted and shall be subject to employee withholding taxes in that pay period. If state or federal law otherwise requires an incentive payment to be included in salary for computing a benefit, the incentive shall be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months.

(b) Incentive payments consisting of lump sum payments for surpassing performance expectations under subparagraph (c)(1)(C) of Code Section 45-21-2 under employee incentive compensation plans will be included in calculating earnable compensation in determining retirement benefits under Chapters 2 and 3 of Title 47.

When an incentive payment will be included in salary for computing retirement benefits, the incentive shall be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months. These incentive payments shall be included as salary in the pay period granted and shall be subject to employee withholding taxes in that pay period. If state or federal law otherwise requires an incentive payment to be included in salary for computing a

benefit, the incentive shall be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months.

(c) Incentive payments made under a goal based plan are not prohibited by Code Sections 47-2-32 and 47-3-27. (Code 1981, § 45-21-9, enacted by Ga. L. 2001, p. 500, § 1; Ga. L. 2006, p. 760, § 1/SB 472.)

The 2006 amendment, effective May 3, 2006, substituted “shall” for “will” throughout the section; substituted “a meritorious award” for “an incentive awards” in paragraph (a)(1); deleted “or” at the end of paragraph (a)(2); added “; or” at the end of paragraph (a)(3); added paragraph (a)(4); in subsection (b), substituted “Incentive payments consisting of lump sum payments for surpassing performance expectations under subparagraph

(c)(1)(C) of Code Section 45-21-2” for “The following incentive payments” and substituted a period for a colon at the end; deleted former paragraphs (b)(1) and (b)(2), which read: “(1) Lump sum payments for surpassing performance expectations under subparagraph (c)(1)(C) of Code Section 45-21-2; and (2) Goal based or incentive pay under subparagraph (c)(1)(D) of Code Section 45-21-2”; and added subsection (c).

CHAPTER 22

PUBLIC EMPLOYEE HAZARDOUS CHEMICAL PROTECTION AND RIGHT TO KNOW

Sec.

45-22-9. Publication by employers of list of hazardous chemicals in workplace.

45-22-5. Exclusions from chapter; exclusions from labeling requirements; dissemination of information.

RESEARCH REFERENCES

ALR. — Preemption of state law by U.S.C.S. §§ 2051 to 2083), 14 ALR Fed. 2d Consumer Product Safety Act (CPSA) (15 501.

45-22-9. Publication by employers of list of hazardous chemicals in workplace.

On and after July 1, 1989, each employer shall publish in print or electronically in January and July of each year a list of hazardous chemicals that its employees use or are exposed to in the workplace. Such list shall be available for public inspection at the workplace office. A comprehensive list of all hazardous chemicals used by the employer shall also be available for public inspection at the employer's state

headquarters. (Code 1981, § 45-22-9, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, § 11; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

CHAPTER 23

DRUG-FREE PUBLIC WORK FORCE

Sec.	Sec.
45-23-3. Definitions.	45-23-7. Continuance of employment for drug user; requirements and procedure.
45-23-4. Suspension or termination of public employee convicted of drug offense.	45-23-8. Administrative procedures.

45-23-3. Definitions.

As used in this chapter, the term:

(1) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of the term “controlled substance” in paragraph (4) of Code Section 16-13-21.

(2) “Convicted” or “conviction” refers to a final conviction in a court of competent jurisdiction or the acceptance of a plea of guilty.

(3) “Dangerous drug” means any drug or substance defined as such under Code Section 16-13-71.

(4) “Marijuana” means any substance described in paragraph (16) of Code Section 16-13-21.

(5) “Public employee” means any person employed on a full-time, part-time, temporary, or intermittent basis by the state, including any agency, authority, department, bureau, or instrumentality thereof, or by any entity covered under the state system of personnel administration created by Chapter 20 of this title. Such term shall also include all employees, officials, or administrators of any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.

(6) “Public employer” means any state agency, department, board, bureau, or other instrumentality. This term also includes any agency covered under the state system of personnel administration created

by Chapter 20 of this title or any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.

(7) “Public employment” means employment by any public employer. (Code 1981, § 45-23-3, enacted by Ga. L. 1990, p. 2004, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-83/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in paragraphs (5) and (6).

The 2012 amendment, effective July 1, 2012, substituted “state system of personnel administration created by Chapter 20 of this title” for “State Personnel Administration” in the first sentence of paragraph (5) and in the second sentence of paragraph (6).

Editor’s notes. — Ga. L. 2009, p. 745, § 1, purported to amend this Code section, but the amendment was inapplicable.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-23-4. Suspension or termination of public employee convicted of drug offense.

(a) Any public employee who is convicted for the first time, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be suspended from his or her public employment for a period of not less than two months. Any such employee shall be required as a condition of completion of suspension to complete a drug abuse treatment and education program licensed under Chapter 5 of Title 26 and approved by: (1) the State Personnel Board in the case of employees employed by departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2; or (2) the public employer having management and control of the employee in the case of other public employees.

(b) Any public employee who is convicted for a second or subsequent time, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be terminated from his or her public employment and shall be ineligible for other public employment for a period of five years from the most recent date of conviction. (Code 1981, § 45-23-4, enacted by Ga. L.

1990, p. 2004, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-84/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the end of the last sentence of subsection (a).

The 2012 amendment, effective July 1, 2012, substituted “employed by departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2” for “in the classified service of the State Personnel Administration” near the middle of the second sentence of subsection (a).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-23-7. Continuance of employment for drug user; requirements and procedure.

On and after July 1, 1990, if, prior to an arrest for an offense involving a controlled substance, marijuana, or a dangerous drug, a public employee notifies the employee’s public employer that the employee illegally uses a controlled substance, marijuana, or a dangerous drug and is receiving or agrees to receive treatment under a drug abuse treatment and education program licensed under Chapter 5 of Title 26 and approved by: (1) the State Personnel Board in the case of employees employed by departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2; or (2) the public employer having management and control of the employee in the case of other public employees, the public employee shall be entitled to maintain the employee’s public employment for up to one year as long as the employee follows the treatment plan. During this period, the public employee shall not be separated from public employment solely on the basis of the employee’s drug dependence, but the employee’s work activities may be restructured if practicable to protect persons or property. No statement made by an employee to a supervisor of the public employee or other person in order to comply with this Code section shall be admissible in any civil, administrative, or criminal proceeding as evidence against the public employee. The rights granted by this Code section shall be available to a public employee only once during a five-year period and shall not apply to any public employee who has refused to be tested or who has tested positive for a controlled substance, marijuana, or a dangerous drug. (Code 1981, § 45-23-7, enacted by Ga. L. 1990, p. 2004, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-85/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the middle of the first sentence of this Code section.

The 2012 amendment, effective July 1, 2012, near the middle of the first sentence of this Code section, inserted a colon following “approved by”, and substituted “employed by departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2,” for “in the classified service of the State Personnel Administration”.

Editor’s notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

45-23-8. Administrative procedures.

Administrative procedures for the implementation of this chapter shall be promulgated by the State Personnel Board for departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2 and by other public employers for other public employees under their management and control. Such procedures shall include those elements of due process of law required by the Constitution of Georgia and the United States Constitution. (Code 1981, § 45-23-8, enacted by Ga. L. 1990, p. 2004, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-86/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” in the middle of the first sentence of this Code section.

The 2012 amendment, effective July 1, 2012, substituted “departments or agencies subject to the board’s rules and regulations, as such terms are defined in Code Section 45-20-2” for “the classified service of the State Personnel Administration” in the first sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

